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5 **THE HEARING EXAMINER OF THE CITY OF BELLINGHAM**  
6 **WHATCOM COUNTY, WASHINGTON**

7 **IN RE:**  
8 **Conteslin LLC/Brent Belsher, Appellant**

**HE-18-PL-008**  
**HE-18-PL-009**

9 of a March 2, 2018 administrative decision  
10 ADM2018-0008 on a request for code  
11 interpretation

**FINDINGS, CONCLUSIONS, AND  
DECISION**

12 and

13 of a July 25, 2018 administrative decision  
14 approving ADM2018-0019, an application for  
15 temporary building encampment

Both uses at 1013 W. Holly Street by  
Lighthouse Mission Ministries

**SHARON A. RICE, HEARING EXAMINER**

16  
17 **SUMMARY OF DECISION**

18 The record presented does not demonstrate that the Director erred either in the March 2, 2018  
19 issuance of code interpretation ADM2018-0008 or in the July 25, 2018 approval of temporary  
20 building encampment permit ADM2018-0019. Both appeals are denied.

21 **SUMMARY OF RECORD<sup>1</sup>**

22 **Request:**

23 Conteslin LLC/Brent Belsher filed a timely appeal of the Planning and Community  
24 Development Department's administrative determination.

25 **Hearing Date:**

26 The Bellingham Hearing Examiner conducted a hearing on the appeal on November 28th,  
27 November 30th, and December 4th, 2018. On the record, the parties agreed to a post-hearing  
28 submission schedule and a decision issuance date of February 1, 2019. After adjournment,

<sup>1</sup> Findings begin on page 12.

1 issues arose causing the parties to request a one-week extension in submitting closing  
2 arguments, which bumped the decision issuance deadline to February 8, 2019. During  
3 deliberations, the undersigned requested and was granted an additional one-week extension by  
all parties to February 15, 2019.

4 **Testimony:**

5 At the hearing the following individuals presented testimony under oath:

6 **Conteslin LLC/Brent Belsher (Appellant) Witnesses:**

Jessica Van Dusen, Business owner  
Brent Belsher, Principal of Conteslin LLC, Appellant  
Kip Wayerski, Business owner  
Jason Loeb, Real estate broker  
W. Thomas Follis, Appraiser  
Jessica Perry, Business owner  
Max Lewis, Condominium owner  
Jill Likkel, Business owner  
Alice Cords, Owner of multifamily development  
Mark Gale, Condominium owner

15 **City Witnesses:**

16 Richard M. Sepler, Planning and Community Development Director  
17 Clark Williams, Superintendent of fleet, facilities, communications, and traffic  
18 David Doll, Bellingham Police Chief  
19 Chris Behee, Senior GIS analyst  
20 Kurt Nabbefeld, Development services manager

21 **Lighthouse Mission Ministries (Lighthouse, Applicant) Witnesses:**

22 Dwayne Newfeld, LMM employee  
23 Hans Erchinger-Davis, LMM Executive Director  
24 Bill Grimmer, Drop-In Center manager  
Bridget Reeves, LMM Associate Director

25 **Attorney Representation:**

26 Philip Serka, of Adelstein, Sharpe, and Serka, represented the Appellant.

1 Alan Marriner, Deputy Assistant City Attorney, represented the Bellingham Planning and  
2 Community Development Department.

3 Karen Philips and Brendan Gaff, of the Northwest Justice Project, represented Lighthouse  
4 Mission Ministries.

4 **Exhibits:**

5 The following exhibits were admitted in the record:<sup>2</sup>

6 *For the Appellant (Appellant exhibits denoted in Findings with prefix "A")*

- 7 1. Photos numbered A through T of the area at 1013 W. Holly Street, taken by Brent  
8 Belsher
- 9 2. Letter from Andreas Weinrich, dated March 22, 2018
- 10 3. Letter from Dr. Catherine Dayhoff, dated March 22, 2018
- 11 4. Letter from Donna Kelleher, DVM, dated March 22, 2018
- 12 5. Letter from Elizabeth B. Stanton, MA, dated March 19, 2018
- 13 6. Letter from Jessica Perry, dated March 20, 2018
- 14 7. Letter from Jessica Van Dusen, dated March 16, 2018
- 15 8. Letter from Jill Likkell, dated March 21, 2018
- 16 9. Re-notice of application, ADM2018-0019, dated May 25, 2018
- 17 10. Letter to Brent Belsher from Jason Loeb with email attachments from Amia Froese  
18 and William Stevens, dated November 8, 2017
- 19 11. *Bellingham Herald* article regarding stabbing at shelter, dated March 28, 2018
- 20 12. *Bellingham Herald* article regarding custody of homeless, dated March 15, 2018
- 21 13. Email from Brent Belsher to Jason Loeb, dated July 2, 2018, and email from Jessica  
22 Perry to Brent Belsher, dated July 3, 2018
- 23 14. Email from Jason Loeb to Brent Belsher, dated July 3, 2018
- 24 15. Email from Vinessa Andreano to Brent Belsher, dated July 9, 2018
- 25 16. Email from Margo Rigney to Brent Belsher, dated September 1, 2018

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26 <sup>2</sup> Throughout the proceedings, there were objections to admission of various exhibits by counsel for all three parties  
27 on the grounds of relevance, timeliness, and lack of foundation. All admissibility objections were overruled by the  
28 undersigned after consideration, on the grounds that none of the offered documents was so irrelevant, so unduly  
prejudicial with regard to timing or content, or so lacking in foundation that it did not comport with the generally  
more relaxed rules of evidence widely employed in land use hearings throughout Washington. Weight and  
credibility were assigned to each offered exhibit consistent with the judgment of the undersigned.

- 1 17. Email from Jill Likkell to Brent Belsher, dated September 17, 2018
- 2 18. Building official approval to exempt Drop-In Center shelter from State building
- 3 codes, with accompanying request, dated December 11, 2014
- 4 19. Email from Stalheim to Richard M. Sepler regarding request to extend building
- 5 exemption, dated August 13, 2015
- 6 20. Email from Richard M. Sepler to Stalheim regarding request to extend building
- 7 exemption, dated August 21, 2015
- 8 21. Email from Stalheim to James Tinner, dated August 21, 2015
- 9 22. Email from James Tinner to Richard M. Sepler, dated August 21, 2015
- 10 23. Email from Stalheim to James Tinner regarding request for approval, dated
- 11 August 21, 2015
- 12 24. Email from James Tinner to Lisa Brogan and James Sanderson, dated
- 13 September 14, 2015
- 14 25. Email from Franks to James Tinner, dated October 5, 2016
- 15 26. 180-day approval from James Tinner to Lighthouse Mission Ministries, dated
- 16 October 6, 2016
- 17 27. Email from Tara Sundin to Heather Aven, dated March 15, 2017
- 18 28. Email from Coogan to James Tinner, dated March 17, 2017
- 19 29. Appellant's analysis of City statistics and responses by the Police Department at
- 20 1013 W. Holly Street, from October 9, 2016 through November 7, 2018
- 21 30. Email from Hans Erchinger-Davis to Richard M. Sepler, dated March 30, 2017
- 22 31. Email from Richard M. Sepler to Hans Erchinger-Davis, dated March 30, 2017
- 23 32. Email from Alan Marriner to Richard M. Sepler, dated May 12, 2017
- 24 33. Email from Richard M. Sepler to Alan Marriner, dated May 15, 2017
- 25 34. Memo from James Tinner to Richard M. Sepler regarding exempt codes, dated
- 26 May 16, 2017
- 27 35. Email from Hans Erchinger-Davis to Richard M. Sepler regarding request for
- 28 "variance" which expires October 3rd, dated September 18, 2017
36. Letter from Philip Serka to Kurt Nabbefeld, dated June 7, 2018
37. Email from Ken Cords to Kurt Nabbefeld, dated May 22, 2018
38. Email from Prema Krishnamurthy to Kurt Nabbefeld, dated May 25, 2018
39. Email from Prema Krishnamurthy to Kurt Nabbefeld, dated June 7, 2018
40. Email from Prema Krishnamurthy to Kurt Nabbefeld, dated May 25, 2018

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41. Email from Terry Borth to Kurt Nabbefeld, dated May 25, 2018
42. Letter from Philip Rosellini to Kurt Nabbefeld, dated May 25, 2018
43. Email from Sarah Pearson to Kurt Nabbefeld, dated May 28, 2018
44. Email from Colette Cloutier to Kurt Nabbefeld, dated May 29, 2018
45. Letter from Olympic Condo Board to Kurt Nabbefeld, dated May 29, 2018
46. Email from Lyn Jackson to Kurt Nabbefeld, dated May 29, 2018
47. Email from Mark Gale to Kurt Nabbefeld, dated May 30, 2018
48. Letter from Northwest Recycling to Kurt Nabbefeld, dated May 30, 2018
49. Email from Gordon Lavigneure to Kurt Nabbefeld, dated May 31, 2018
50. Letter from Richard M. Sepler to Philip Serka, dated June 1, 2018
51. Email from Tremaine to Kurt Nabbefeld, dated June 5, 2018
52. Email from Stuurmans to Kurt Nabbefeld, dated June 6, 2018
53. Letter from Mark and Linda Gale to Kurt Nabbefeld, dated June 6, 2018
54. Email from Kip Wayerski to Kurt Nabbefeld, dated June 7, 2018
55. Email from Jeff Pernick to Kurt Nabbefeld, dated June 8, 2018
56. Email from Roger Rowles to Kurt Nabbefeld, dated June 8, 2018
57. Email from Nancy Sheehy to Kurt Nabbefeld, dated June 8, 2018
58. Email from Stuurmans to Kurt Nabbefeld, dated June 12, 2018
59. Fire Department statistics and responses at 1013 W. Holly Street, from October 9, 2016 through October 31, 2018
60. Appeal of Conteslin LLC and amended appeal with statement, dated March 13, 2018
61. Second appeal of Conteslin LLC, dated August 2, 2018
62. Proposed City planning department text amendment to allow operation of a homeless shelter as a conditional use in the Commercial Old Town Overlay Zone, undated
63. Letter of Intent between the City and Lighthouse Mission Ministries, dated February 24, 2016
64. City site selection criteria for shelter, undated
65. Handout with answers from Hans Erchinger-Davis of the Lighthouse Mission, undated
66. Planning Director determination that the low-barrier shelter is a "public building in use" and said uses are conditional in a Commercial zone, dated February 27, 2017

67. Low-barrier shelter site selection phase 1 analysis, dated March 21, 2018
68. Proposed appeal regarding FAA interpretation that emergency shelter is non-residential, undated
69. Planning department "suggested Bellingham low-barrier shelter" sites, dated June 7, 2017
70. Memo from Richard M. Sepler to City Council, dated April 29, 2017
71. City site selection 509 Girard and A/B street parking lot, dated March 15, 2018
72. Memo from Richard M. Sepler to City Council regarding resolution exempting the interim emergency shelter from State building code requirements, dated May 22, 2017
73. Letter from Grant Jansen of Jansen, Inc., dated November 9, 2018
74. Report and resume from Don Pierce, former Police Chief, dated October 30, 2018, together with attached follow up email dated December 2, 2018 from Don Pierce<sup>3</sup>
75. Appraisal report and resume from Tom Follis, dated October 15, 2018
76. Application for temporary use permit from Lighthouse Mission, dated May 15, 2018
77. Appellants' analysis of City Police Department responses at the 1000 block of W. Holly Street for 2014, 2015, and January 1 through October 10, 2016
78. Brent Belsher's notes on the overview of Police response data
79. Cell phone photograph from Mark Gale, dated September 28, 2018
80. Letter from Janson Inc., dated November 29, 2018
81. Photos from F Street facing the Agape home

*For the City (City exhibits denoted in Findings with prefix "C")*

1. Appeal of administrative decision by the Planning Director, dated March 12, 2018
2. Director's interpretation of land use development ordinance
3. Supplemental statement regarding Conteslin LLC/Brent Belsher appeal of Director's interpretation
4. Amended supplemental statement regarding appeal
5. Appeal of administrative decision by the Planning Director, dated August 2, 2018

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<sup>3</sup> The objections of the City and of Lighthouse to this written statement from Former Chief Pierce were noted for the record but overruled. Former Chief Pierce was not available for cross examination and did not provide testimony under oath as did the other witnesses, which factors were weighed in the reliance placed by the undersigned on the opinions expressed in the document.

6. Temporary building encampment permit, dated July 25, 2018, including:
- Exhibit A to Permit: Application material
- Exhibit B to Permit: RCW 35.21.915
- Exhibit C to Permit: Emergency Ordinance No. 2018-04-007
- Exhibit D to Permit: Notice of applications
- Exhibit E to Permit: Public comment
- Exhibit F to Permit: Resolution No. 2017-27
- Vicinity map of temporary building encampment
- Notice of complete application, dated May 15, 2018
- Declaration of mailing, dated May 16, 2018
- Letter from Philip Serka to Brent Belsher, dated May 18, 2018
- Certificate of posting, dated May 25, 2018
- Letter from Richard M. Sepler to Philip Serka, dated June 1, 2018
- Email correspondence from Hans Erchinger-Davis to Kurt Nabbefeld, dated June 11, 2018
- Notice of decision, dated July 25, 2018
- PowerPoint presentation, "Quantifying the community impact of interim housing facilities using Police call data" [replacement]
- Old Town Overlay District - establishment of boundaries
- Email from Brent Belsher to Richard M. Sepler (Exhibit 1 to declaration of Richard M. Sepler, filed with the Hearing Examiner on May 9, 2018)
- Resolution No. 2017-27 (Exhibit 2 to declaration of Richard M. Sepler, filed with the Hearing Examiner on May 9, 2018)
- Emergency Ordinance No. 2018-01-001 (Exhibit 3 to declaration of Richard M. Sepler, filed with the Hearing Examiner on May 9, 2018)
- Emergency Ordinance No. 2018-02-005 (Exhibit 4 to declaration of Richard M. Sepler, filed with the Hearing Examiner on May 9, 2018)
- Bellingham Herald* article, "With the homeless shelter stuck in an impasse, here's what the Mission has planned," by Kie Relyea (Exhibit 6 to declaration of Richard M. Sepler, filed with the Hearing Examiner filed on May 9, 2018)
- Public Works agreement to expand video surveillance to include some City solid waste disposal sites and the Drop-In Center
- Crime watch video surveillance sign

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30. Commercial gross lease for part of Harborview Building
31. Map of City surveillance cameras near the Drop-In Center
32. Photo of Drop-In Center taken by City surveillance camera on November 14, 2018 at 4:12 p.m.
33. "No Place to Call Home" slide
34. *Inside Bellingham*, Spring & Summer 2018, page 1
35. PowerPoint presentation, "Context of Homelessness", dated January 22, 2018
36. PowerPoint presentation, "Temporary Homeless Shelters", dated September 24, 2018
37. "Updated Point in Time Count of Homelessness for 2018" slide
38. Google Earth photos of the neighborhood near the Drop-In Center (4 slides), taken November 27, 2018
39. Bellingham homeless camp activity as of November 28, 2018 and analysis of existing homeless shelters and Police Call and written report data [replacement for Exhibit 21]
40. Google Earth photos of the neighborhood near the Drop-In Center (4 slides), taken November 27, 2018 [replacement for Exhibit 38]
41. Email from Clark Williams to David Doll, dated November 28, 2018
42. Photographs of the tent encampment at City Hall, December 2017 and January 2018
43. Analysis of Police event data in the vicinity of Drop-In Center
44. BMC 20.35.065, as of October 8, 2018
45. Lighthouse Mission Drop-In Center floor plans

*For Lighthouse Mission Ministries (denoted in Findings with prefix "L")*

1. Lighthouse Mission Ministries (LMM) articles of incorporation
2. LMM bylaws, dated March 8, 2005
3. Aerial photograph of the Drop-In Center and the Harborview Building, accessed via Google Maps
4. Program overview
5. LMM summary
6. LMM life transformation matrix
7. Statistical analysis of entire Lighthouse Mission population versus Drop-In Center population

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8. Drop-In Center code of conduct and guest acknowledgement
9. Old school guide to the Drop-In Center
10. Photograph of Drop-In Center patio signage, taken by Karen Phillips, November 2018
11. Letter from Robin M. Williams, Tam-Jor Enterprises, to Ron Buchinski, LMM, titled "Topic: Authorization", dated February 15, 2015
12. Letter from LMM to neighbors, dated November 9, 2016
13. Email correspondence between Brent Belsher and Hans Erchinger-Davis, subject line "Permission For LMM to Conduct Walk-Throughs at 1111 W. Holly Street", dated November 15, 2016 to January 3, 2017
14. Email correspondence between Brent Belsher and Hans Erchinger-Davis, subject line "Harborview Building", dated January 3 and 4, 2017,
15. Email correspondence between Brent Belsher and Bridget Reeves, subject line "Mess to Clean Up", dated March 23 to April 3, 2017
16. Email correspondence between Bridget Reeves and Brent Belsher, subject line "Checking-in", dated January 24 and 25, 2017
17. Email correspondence between Bridget Reeves and Brent Belsher, subject line "Cleaning of carpet today between 3 and 5 pm", dated April 5, 2017
18. Email correspondence between Brent Belsher, Bridget Reeves, and Hans Erchinger-Davis, subject line "Clean up", dated March 23 to July 31, 2017, and attached invoices from Swan's Clean Care & Restoration, LLC, dated July 13, 2017, and Atta Boy Window & Gutter Cleaning Inc., dated July 20, 2017
19. Email correspondence between Brent Belsher and Hans Erchinger-Davis, subject line "Let's Meet Please", dated June 29, 2017
20. Order of the Whatcom County Board of Equalization regarding the Harborview Building, dated July 29, 2015
21. LMM neighborhood relations program
22. KING 5 News online article, "Bellingham outreach teams hope to stem the tide of homeless deaths", dated May 21, 2018
23. *Bellingham Herald* article, "Number of homeless in Bellingham Continues to Rise: Will a Permanent shelter get built?", dated September 18, 2018
24. *Bellingham Herald* article, "On Bitterly Cold Days, Here's Where up to 50 Homeless women in Bellingham will stay warm", dated December 3, 2018
25. Letter from Andrew George, dated December 3, 2018

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- 1 26. Email from Moonwater, Executive Director of Whatcom Dispute Resolution Center,  
2 dated December 3, 2018

3 *Record Documents (Where cited, these items are denoted in Findings with prefix "R")*

- 4 1. Order Denying Motions To Dismiss and Continuing Hearing (together with all  
5 reviewed documents listed on page 1), issued May 25, 2018
- 6 2. Order Setting Hearing and Pre-Hearing Schedule, Conteslin LLC/Belsher  
7 consolidated appeals, HE-18-PL-008 and HE-18-PL-009, issued September 4, 2018
- 8 3. Order Ruling on Second Round Pre-Hearing Motions (together with all reviewed  
9 documents listed on pages 2 and 3), issued October 23, 2018
- 10 4. Applicant's Witness and Exhibit List, dated November 9, 2018
- 11 5. Appellant's List of Witnesses, dated November 12, 2018
- 12 6. Appellant's List of Exhibits, dated November 12, 2018
- 13 7. City's Witness and Exhibit List, dated November 13, 2018
- 14 8. Appellant's Prehearing Brief, dated November 19, 2018
- 15 9. Appellant's Brief, dated November 19, 2018
- 16 10. City's Hearing Memorandum, dated November 19, 2018
- 17 11. City's Addendum Witness and Exhibit List, dated November 19, 2018
- 18 12. Applicant's Amended Prehearing Brief, dated November 20, 2018
- 19 13. Applicant's Amended Witness and Exhibit List, dated November 29, 2018
- 20 14. Appellant's Written Argument, dated December 20, 2018, with attached exhibits:  
21 A. Testimony of Police Chief David Doll  
22 B. Old Town comprehensive plan, development character  
23 C. Old Town sub-area, circulation, streetcars, and parking
- 24 15. Post-Hearing Scheduling Order, issued December 5, 2018
- 25 16. City's Closing Argument, dated January 11, 2019
- 26 17. Applicant's Closing Argument, dated January 11, 2019<sup>4</sup>

27  
28 <sup>4</sup> In its closing brief, Lighthouse requested the undersigned strike portions of the Appellant's closing brief on multiple grounds, including disagreement with characterization of witness testimony and objection to discussion of homeless shelter land use permit decisions in other jurisdictions, which was not brought up at hearing; the City joined in this request to strike portions of Appellant's brief. This decision declines to act on these requests. The findings and conclusions speak for themselves as to how the undersigned heard and characterized witness testimony and oral and written argument from all parties.

18. Appellant's Reply to Applicant's and City's Written Closing Arguments, dated January 18, 2019

**Issues on Appeal:**

In the March 12, 2018 appeal of Planning Director decision ADM 2018-0008 (Ode Interpretation), as clarified at the pre-hearing conference, the Appellant alleged the following (paraphrased/ abbreviated) errors, which are found in the appeal and the amended supplemental appeal statements:

- That the decision improperly concluded that Lighthouse's use of 1013 W. Holly Street as a low-barrier shelter facility for up to 120 homeless individuals is an allowed use in the underlying Commercial zone/Old Town Overlay District and is consistent with the Comprehensive Plan;
- That to the extent the use can be allowed in the zone, it should be a conditional use; and
- That the existing facility generates impacts including trespass, damage, noise, calls to emergency services, etc., which have caused the Appellant to incur costs.

In the appeal filed August 2, 2018 of administratively approved temporary building encampment permit ADM 2018-0019 (Temporary Building Encampment Permit, Temporary Permit), the Appellant alleged the following (verbatim) errors:

- The decision is inconsistent with RCW 35.21.915, the Emergency Ordinance 2018-04-007, and the Comprehensive Plan, which requires encampments to be located in light industrial zones. The approval of an "encampment" for five years is inconsistent with the "temporary encampment" statute, RCW 35.21.915, which contemplates encampments for a much shorter period of time.
- The conditions [of] approval attached are not enforceable and not able to be monitored. Nor do they mitigate the danger/concerns caused by this use.
- The issued temporary use permit for a building encampment did not comply with all the City regulations as required by Section 9 of the Emergency Ordinance No. 2018-04-007 because:
  - (i) The City permits the location of temporary use permit which creates a nuisance in accordance with Section 10.28(b)(k)(q); and
  - (ii) Violates BCC 10.60.070 as causing litter.

**Appellant's Requested Relief:**

The Appellant requested that both approvals be reversed and the overnight shelter use of the drop-in day center be ordered to desist. In the event that the permit is not denied, Conteslin requested that the Hearing Examiner impose, at a minimum, the following conditions:

- 1 a) The Lighthouse Mission's primary entrance to the facility should be relocated to the  
2 east side of the building, and an exterior public area on existing, available Lighthouse  
3 Mission property should be created for occupants and others who are drawn to the  
4 Drop-In Center. The exterior area should be fenced off from the adjoining Agape  
5 residents' use. The condition should also require that there be a complete barring of  
6 persons and property on the Holly Street sidewalks adjacent to Holly Street, except for  
7 those who are using the bus service. The entrance on Holly Street should continue as  
8 the secondary entrance only for staff, emergency responders, and those who are  
9 disabled or cannot walk up steps.
- 10 b) The temporary building encampment permit should be a "temporary permit", not issued  
11 for a 5- or 6-year term. Conteslin LLC requests the Hearing Examiner change the term  
12 of the permit to end on May 22, 2019, with the opportunity to extend the permit in  
13 accordance with the ordinance. At the time of extension, the City could evaluate  
14 whether or not the impacts disclosed are being mitigated and whether that mitigation is  
15 properly functioning, and further conditions could be imposed on the permit or the  
16 permit could be revoked, if necessary, pursuant to the Emergency Ordinance 2018-04-  
17 007.

## FINDINGS

### *Parties, Subject Property, and Procedural Context*

- 14 1. The Lighthouse Mission Ministries (Lighthouse, the Applicant), a 501(c)(3) non-profit,  
15 tax-exempt, religious organization, owns the property addressed as 1013 W. Holly  
16 Street (the subject property), which is developed with two buildings. The building to  
17 the east is the Agape Home for Women and Children. Lighthouse has operated a Drop-  
18 In Center for homeless individuals out of the western building on the site since 2009,  
19 which use evolved over time to include temporary overnight emergency shelter during  
20 the winter. During the winters of 2014 and 2015, the Interfaith Coalition used the  
21 Drop-In Center at night for an 80-bed cold weather shelter for the homeless. Since  
22 October 2016, Lighthouse began operating a low-barrier shelter providing year-round  
23 overnight sleeping accommodations for homeless persons at 1013 W. Holly Street.  
24 *Exhibits C2, L1, L2, L4, and L5; Hans Erchinger-Davis Testimony.*
- 25 2. The Drop-In Center serves between 200 and 300 homeless persons a day, hosting third  
26 party agency services such as: mental health treatment and medications; medical care;  
27 homeless outreach services; legal services; job skills training and resume assistance;  
28 haircuts; Alcoholics Anonymous meetings; and religious services. Breakfast, lunch,  
and dinner are served daily to homeless individuals. The current low-barrier shelter is  
run by Lighthouse employees and volunteers. It is intended to create a community-  
oriented atmosphere, providing reading materials, games, meals, and optional religious  
services in addition to life saving shelter. *Exhibits L4 and L5; Testimony of Hans  
Erchinger-Davis, Dwayne Neufeld, Bill Grimmer, and Bridget Reeves.*

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- 1 3. In addition to the Drop-In Center, Lighthouse owns several nearby buildings on  
2 separate lots, including its primary facility, The Mission, at 910 W. Holly Street. The  
3 Mission has been in its current location at the corner of F Street and W. Holly since  
4 1973, but it has been in the Old Town neighborhood since 1923, moving several times  
5 over the years. Services provided at The Mission include a 60-bed shelter for homeless  
6 men. Lighthouse also operates The Agape Home, located immediately next door to the  
7 Drop-In Center, which serves homeless women and children. Also, across W. Holly  
8 Street from The Mission, Lighthouse operates the New Life Program, which provides  
9 an additional 11 beds for homeless men and 11 beds for transitional housing for the  
10 homeless. *Exhibits L3, L4, and L5; Testimony of Hans Erchinger-Davis and Bridget  
11 Reeves.*
- 12 4. Brent Belsher, owner and managing member of the holding company called Conteslin  
13 LLC, owns the nearby property addressed as 1111 W. Holly Street, which is developed  
14 with a commercial office building. *Exhibits C1 and C5; Brent Belsher Testimony.* The  
15 Drop-In Center and Mr. Belsher's building are separated by the unimproved G Street  
16 right-of-way owned by the City and a vacant lot. *Exhibit C40; Site Visit.*
- 17 5. The properties owned by Lighthouse and Mr. Belsher referenced in the previous  
18 findings are located in Area 10 of the Lettered Streets Neighborhood and have a  
19 Commercial zoning designation. All three are subject to the Old Town Overlay  
20 District, established in Bellingham Municipal Code (BMC) Chapter 20.35, which was  
21 the City's first adopted urban village. *Exhibit C2; Kurt Nabbefeld Testimony.*
- 22 6. In May 2017, Bellingham City Council passed Resolution 2017-27, which exempted the  
23 Drop-In Center from strict compliance with building codes consistent with state law  
24 codified at Revised Code of Washington (RCW) 19.27.042. Consistent with that state  
25 law, the exemption was limited to a maximum duration of five years. As stated in the  
26 Ordinance, it will expire May 22, 2022 provided that the code deficiencies exempted  
27 continue to pose no threat to human health, life, or safety. *Exhibit C24.*
- 28 7. In mid-February 2018, Mr. Belsher asked the Planning and Community Development  
Department (Department, City) to identify which permitted use in the underlying zone  
allows the operation of a homeless shelter at the subject property. *Exhibit C23.* On  
March 2, 2018, the City issued an administrative determination on Mr. Belsher's request  
for code interpretation (Code Interpretation) finding that Lighthouse's low-barrier  
shelter at W. 1013 Holly Street was an allowed use under the existing zoning because it  
is similar to several uses allowed outright. *Exhibit C2.* Mr. Belsher timely appealed the  
code interpretation. *Exhibits C1, C3, and C4.*
8. The City adopted Emergency Ordinance 2018-04-007 on April 23, 2018. Consistent  
with RCW 35.21.915, this ordinance allows religious organizations to establish

temporary building encampments on property that they own or control, subject only to conditions necessary to protect public health and safety. *Exhibit C9*.

9. On May 8, 2018, Lighthouse applied for a temporary building encampment permit (Temporary Building Encampment Permit, Temporary Permit) for its low-barrier shelter under Emergency Ordinance 2018-04-007. On July 25, 2018, the City approved the Temporary Permit subject to 15 conditions (detailed in Finding 25, below). *Exhibit C6*.
10. On August 2, 2018, the Appellant filed the second appeal, challenging the temporary permit. *Exhibit C5*. Based on the expectation that significantly overlapping evidence would be offered in both hearings, the two appeals were consolidated into the instant open record public hearing. *Exhibits R1 and R2*.

#### *Code Interpretation Decision*

11. On February 20, 2018, Mr. Belsher emailed the Planning Director and asked, "Which permitted use allows for the operation of the emergency shelter at 1013 W. Holly Street?"<sup>5</sup> *Exhibit C23*. The City treated this as a formal request for code interpretation as established in BMC 20.24.020.A. The Planning Department set about answering Mr. Belsher's question. *Testimony of Kurt Nabbefeld and Rick Sepler*.

12. Pursuant to the version of the municipal code in effect at the time the Director's code interpretation was issued, the following uses were allowed, allowed conditionally, and prohibited, per the permitted uses table at BMC 20.23.065, in the Old Town Overlay District underlying both properties in question. Permitted uses included:

1. Retail establishments; 2. Motorcycle and scooter sales; 3. Offices and other commercial services; 4. Banks and other financial institutions; 5. Residential uses; 6. Personal and business services; 7. Commercial recreation; 8. Eating and/or drinking facilities; 9. Repair shops for small equipment and items; 10. Handicraft manufacturing (jewelry, pottery, glass, furniture, etc.); 11. Theaters, art galleries and art studios; 12. Public buildings and uses; 13. Passenger terminal facilities; 14. Private clubs and lodges; 15. Schools, art schools and institutions of higher education; 16. Hotels, motels and resident inns; 17. Day care; 18. Service care, day treatment and child placing agencies; 19. Medical care centers; 20. Neighborhood clubs and activity centers; 21. Public parks; 22. Parking facilities; 23. Community public facilities; and 24. Uses similar to the above.

#### Uses permitted with Code-provided conditions included:

1. Boat sales: limited to properties southwest of Holly Street; 2. Boat repair: complete minor boat and engine repair is permitted; however hull work is

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<sup>5</sup> This query made no reference to the Drop-In Center or any other use at 1013 W. Holly Street other than the shelter. *Exhibit C23*.

1 prohibited; Limited to properties southwest of Holly Street; 3. Automobile sales:  
2 when business activities are conducted entirely within an enclosed showroom; 4.  
3 Live/work; including professional artist, technical and trades; provided that noise,  
4 smell and other impacts are internalized within an enclosed structure; 5. Small  
5 product manufacturing: provided, that noise, smell and other impacts are  
6 internalized within an enclosed structure. This category includes manufacture and  
7 assembly of light and small items made from previously prepared materials such as  
8 office machines, small motors, cabinets, electronic equipment, electrical devices,  
9 and signs; 6. Mini storage facilities: when the floor area is less than 50 percent of  
10 the floor area of other permitted use(s) on site; 7. Freight terminals and  
11 warehousing: when associated with rail transportation (limited to properties abutting  
12 Roeder Avenue, and shall not be expanded to properties abutting Holly Street); 8.  
13 Manufacture of food and beverage; provided, that noise, smell and other impacts are  
14 internalized within an enclosed structure; 9. Outdoor storage of product when: a.  
15 Accessory to a permitted use on site and does not exceed 50 percent of the area of  
16 the permitted use on a square foot basis; b. Located on properties southwest of Astor  
17 Street and between D Street and Whatcom Creek; and c. Located to the rear of  
18 buildings and screened by landscaping or an architectural wall (not blank wall) at  
19 least six feet in height when installed. If appropriate, some viewing of activity may  
20 be allowed through gaps in screening; 10. Warehousing and wholesaling of  
21 products: when in conjunction with retail sales of the same product on site; 11.  
22 Public utilities: exclusive of storage yards; and 12. Wireless communications  
23 facilities, subject to the provisions of Chapter 20.13 BMC; and 13. Care shops for  
24 small animals (house pets such as dogs, cats, etc.); keeping of three or fewer animals  
25 overnight is permitted as an accessory use if animals are kept in an enclosed  
26 structure, and noise, smell and other impacts are internalized within an enclosed  
27 structure.

28 Uses permitted by conditional use permit reviewed per BMC Chapter 20.16 included:

1. Church; 2. Service stations; for automobiles; and 3. Wireless communication facilities, subject to the provisions of Chapter 20.13 BMC.

Uses not permitted included:

1. Retail establishments selling the following products: a. Recreational vehicles; b. Heavy farm and construction equipment; c. Feed, grain, and farm supplies; d. House trailers and mobile homes; 2. Drive-up window facilities such as bank tellers, food and beverage services, laundry pick up, etc.; 3. Adult entertainment; 4. Jails and correctional facilities; 5. Automobile wrecking; 6. Car washes; and 7. Day labor hiring halls.

*Exhibit C44.*

13. Land uses identified in the City's permitted uses table do not include drop in centers or low-barrier shelters; neither are the two uses defined in the municipal code. However,

pursuant to the authority conferred in BMC 20.24.020.B, in considering the requested code interpretation, the Director reviewed definitions for other uses including service care facilities, day treatment centers, offices, and eating establishments. As defined in BMC 20.08.020:

“Day treatment center” means a facility which provides care, supervision, and appropriate therapeutic and educational services during part of a 24-hour day to children under the age of 18 years who are unable to adjust to regular or special school programs or full-time family living because of disruptive behavior, family stress, learning disabilities or other serious, emotional or social handicaps.

“Eating establishment” means an establishment or any part thereof where prepared food is sold, but not alcoholic beverages.

“Office” means a use within a building where services of a clerical, professional, or medical nature are rendered and where the retail sale of goods within said structure is nonexistent or incidental to the primary use. Uses shall include the following: A. Banks and other financial institutions; except those which provide automotive drive up service. B. Other financial establishments such as stock brokerages, security exchanges, investment companies, etc. C. Insurance establishments, including carriers, agents and brokers. D. Real estate offices. E. Law offices. F. Medical offices (all types related to human health care). G. Advertising agencies. H. Consumer credit reporting and collection agencies. I. Computer and data processing service establishments. J. Detective agencies. K. Management, consultant and public relation service establishments. L. Membership organizations, such as labor union, chamber of commerce. M. Engineering, architectural, and surveying services. N. Accounting and bookkeeping services. O. Public offices. P. Travel agencies. Q. Uses similar to the above.

“Service care” means a group residence licensed by the state operated with full-time supervision for housing resident persons who, by reasons of their mental or physical disability, addiction to drugs or alcohol or family and social adjustment problems, require a transitional nonmedical treatment program for rehabilitation and social readjustment. For the purposes of this title, a nonmedical treatment program consists of counseling, vocational guidance, training, group therapy and other similar rehabilitative services but does not include drug and/or alcohol detoxification. Monitoring the taking of prescription medication shall be permitted. The use of medication by any resident shall be incidental to that person’s residence in the facility and shall not be a criterion for residence in the facility. Programs providing alternatives to imprisonment, including prerelease, work-release and probationary programs which are under the supervision of a court, state or local agency are included in this definition. Residences occupied by persons qualifying under the definition of “family” and “secure community transition facilities” are excluded from this definition.

14. Speaking to BMC 20.24.020.B.1, the March 2, 2018 Code Interpretation determined that the activities of the Drop-In Center and low-barrier shelter included many of the same activities as are conducted in day treatment centers, service care uses, medical offices, transient accommodations, and residential uses, all of which are allowed in the



1 zone outright, without conditional use review. The Director determined that the low-  
2 barrier shelter, which is not identified as a prohibited use, could be allowed in the Old  
3 Town Overlay (Commercial) zone because it was similar in nature to these permitted  
4 uses. The Director also concluded that allowing the shelter as a use benefited the  
public good because it provided services and shelter to homeless individuals in the  
City. *Exhibit C2; Rick Sepler Testimony.*

- 5 15. Speaking to BMC 20.24.020.B.2, the code interpretation determined that operation of  
6 the low-barrier shelter in the Old Town Overlay District would be consistent with the  
7 purpose of the general (Commercial) use type, which is to accommodate various levels  
8 of business and service facilities, and would also be consistent with applicable  
Comprehensive Plan Policies, specifically:

9 **LU-27:** Allow nonprofit homeless shelters outright in Industrial zones and conditionally  
in Commercial zones.

10 **H-49:** Support implementation of the Whatcom County Plan to End Homelessness

11 **H-50:** Continue to encourage and support the development of emergency, transitional,  
12 and permanent supportive housing with appropriate on-site services for people with  
special needs and the homeless throughout the City and County. Moving people into  
permanent housing as quickly as possible should be a priority.

13 **H-52:** Foster and support partnerships that have proved to be successful in reducing  
14 homelessness, preventing homelessness, and assisting the chronically homeless with  
needed care.

15 *Exhibit C2.*

- 16 16. Speaking to BMC 20.24.020.B.3, the Code Interpretation determined that the low-  
17 barrier shelter would not generate more traffic than would other uses allowed outright in  
18 the zone, in part because homeless persons tend to have less access to vehicles. While  
19 pedestrian traffic generated by the shelter was anticipated to be higher than many uses,  
20 the Director noted that parks, theaters, eating establishments, schools, and passenger  
terminal facilities – all allowed in the zone – all generate high levels of pedestrian  
21 traffic. Noise created by shelter guests waiting outside twice a day while the shelter is  
converted between day time and night time furnishings was determined to be similar in  
22 nature to the noise that would be generated by theater patrons waiting outside before a  
show, or people waiting to get into schools or restaurants before they open. The  
23 Director determined that the shelter would not generate more light or odors than other  
uses allowed in the zone. *Exhibit C2.*

24 *Temporary Encampment Permit Issuance*

- 25 17. Prior to Mr. Belsher's request for code interpretation, the City had been working on  
26 regulations to address homeless encampments. The record submitted shows that  
Bellingham, like many cities in western Washington, is experiencing a growing  
27 homelessness crisis. Based on tracking since 2013, the number of homeless persons in

1 the City has grown by an average of 10% each year. The “point-in-time count”<sup>6</sup>  
2 conducted in 2017 tallied 742 homeless individuals in the City, which count increased  
3 to 815 in 2018. Most of these homeless individuals in the City are from Whatcom  
4 County. It is believed by those who work with homeless populations that the point-in-  
5 time counts understate the actual number of homeless individuals. The demand for  
6 housing and services for the homeless population exceeds available resources in the  
7 City. There was shelter available for only 470 homeless individuals in 2017 and only  
8 431 homeless in 2018, meaning only about 53% to 64% of the homeless counted were  
sheltered. In 2017, the City received 405 complaints of illegal homeless camps  
throughout the City. Bellingham Police Department has a fulltime camp clean up  
coordinator tasked with addressing illegal homeless camps. *Testimony of Rick Sepler,  
Chris Beehee, and Hans Erchinger-Davis; Exhibits C33, C35, C36, C37, and C39.*

9 18. Homeless individuals unable to obtain shelter sleep outside at night, facing both crime  
10 and death from exposure. Approximately three to four homeless persons die each  
11 quarter in Bellingham, which has a higher homeless population per capita than Seattle.  
*Testimony of Hans Erchinger-Davis and Police Chief David Doll; Exhibit L23.*

12 19. Responding to this problem, in May 2017 the City Council passed Resolution 2017-27  
13 exempting the low-barrier shelter from strict compliance with state building codes  
14 consistent with RCW 19.27.042, which allows building code exemptions to provide  
15 emergency housing for indigent persons. The City’s Building Official and Fire Marshal  
16 submitted that the building’s code deficiencies did not pose a threat to human life,  
17 health, or safety. The approved exemption may continue until May 22, 2022 provided  
that the building, as occupied with exemptions per the resolution, continues not to pose  
any threat to human life, health, or safety. The resolution identified the low-barrier  
shelter as an “interim” shelter. *Exhibit C24.*

18 20. Then, on January 31, 2018, the City adopted Emergency Ordinance 2018-01-001, which  
19 established interim zoning regulations for the siting, establishment, and operation of  
20 temporary tent encampments sponsored by religious organizations as authorized by  
21 RCW 35.21.915. City Staff indicated that this ordinance was adopted in response to an  
unregulated tent encampment at City Hall in December 2017 that lasted several weeks.  
*Exhibits C25 and R12; Rick Sepler Testimony.*

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24 <sup>6</sup> The undersigned takes notice that the Washington State Homeless Housing and Assistance Act requires each  
25 county in Washington State to conduct an annual “point in time count” of sheltered and unsheltered homeless  
26 persons. This census is conducted in accordance with the requirements of the U.S. Department of Housing and  
27 Urban Development (HUD), according to the Washington State Department of Commerce, which agency prepares  
and provides the survey forms for county use. [https://www.commerce.wa.gov/serving-communities/homelessness/  
annual-point-time-count/](https://www.commerce.wa.gov/serving-communities/homelessness/annual-point-time-count/)

21. On February 26, 2018, Emergency Ordinance 2018-02-005 made nonprofit organizations that are not religious organizations eligible to sponsor temporary tent encampments. *Exhibit C26*. The City's intent was to foster /allow as much encampment provision as possible. *Rick Sepler Testimony*.
22. On April 23, 2018, Bellingham City Council adopted Emergency Ordinance 2018-04-007, repealing and replacing the previous emergency ordinance 2018-02-005. Emergency Ordinance 2018-04-007 clarified the interim zoning regulations for the siting, establishment, and operation of temporary encampments sponsored by religious organizations pursuant to RCW 35.21.915, specifically by allowing tent encampments to be within buildings as well as outside buildings. *Exhibit C9*. This was added as another tool to allow temporary encampments in all areas of the City. Staff noted that the state statute only allows conditions needed to address health and safety. The Planning Department had been working on the draft final regulations during the time all three emergency ordinances were passed. *Rick Sepler Testimony*.
23. On May 8, 2018, Lighthouse applied for a temporary building encampment permit (Temporary Permit) for its low-barrier shelter under the Emergency Ordinance. Notice of the application was issued May 16, 2018, with comments due by May 30th, and re-noticed a second time on May 25th to include 13 proposed conditions, this time with comments due by June 8, 2018. *Exhibit C10; Rick Sepler Testimony*.
24. The City received and considered a substantial amount of public comment on the application. Topics addressed in these comments were as follows: congregation on/blockage of the public sidewalk; perceived threats by those congregated on sidewalk; adverse effects on neighborhood including incidents of drug use, vandalism, public urination and defecation, arguments and fights, yelling and swearing, trespass, and theft; lack of enforcement mechanisms for proposed conditions; inconsistency with the Comprehensive Plan; and scale and location of the encampment. *Exhibits C6 and C11; Rick Sepler Testimony*.
25. On July 25, 2018, the City approved the Temporary Permit subject to conditions. Finding number 19 of the Temporary Permit addressed public comments in detail. The 15 adopted conditions were as follows:
1. The Lighthouse Mission Ministries (LHMM) shall strictly apply to the submitted Code of Conduct (*Exhibit C7*). Guests who do not comply with the Code of Conduct shall be "barred" from future use of the temporary encampment. The LHMM may establish and facilitate a review process that can assess the ability of those who have been previously "barred" to gain readmission to the temporary encampment, provided that the LHMM determines that there are changed circumstances and a high probability that the readmitted guest will fully abide by the Code of Conduct. (*See Exhibit L8*).
  2. The temporary encampment shall be limited to a maximum of 80 overnight guests. The LHMM offers services, including overnight sleeping, in several buildings near the subject

1 site. In order to reduce potential cumulative impacts associated with the services provided  
2 by LHMM in the area, the Director may reduce the allowed occupancy of the temporary  
3 encampment if other similar facilities are permitted throughout the city that serve the  
4 same population.

- 5 3. The LHMM shall identify a Staff member (or Staff members) within their organization  
6 that will be the point of contact regarding neighborhood concerns and questions. This  
7 individual's (or individuals') contact information shall be made available on the LHMM  
8 website and distributed in the immediate neighborhood. The purpose of this contact is to  
9 allow residents or businesses in the neighborhood to contact the LHMM and discuss  
10 concerns or issues associated with behaviors or actions directly attributable to temporary  
11 encampment guests. The LHMM may at its discretion use progressive discipline, up to  
12 and including "barring" an individual from the Drop-In Center, as a means of addressing  
13 verifiable and attributable off-campus behaviors that are inappropriate.
- 14 4. The LHMM shall meet no less than monthly with Police Department and Planning and  
15 Community Development Staff to review issues associated with the operation of the  
16 temporary encampment. The purpose of this meeting is to develop and implement (as  
17 needed) strategies to address identified issues.
- 18 5. The temporary encampment is not in full compliance with all of the requirements of the  
19 building code. However, compliance with the deficient requirements has been waived  
20 through City Council Action (Resolution 2017-27) as the building has been found to be  
21 safe, is used to provide housing to indigent persons and meets the requirements of RCW  
22 19.27.042. The LHMM shall immediately cease operation of the temporary encampment  
23 should the City's Building Official and Fire Marshal determine that circumstances have  
24 changed (and are irremediable) and that there is a threat to human life, health and safety.  
25 (*Exhibits C12 and 24*).
- 26 6. Use of the Drop-In Center as a temporary encampment shall terminate on (or before) May  
27 22, 2022 concurrent with the expiration of the exemption from building code compliance  
28 granted though Resolution 2017-27. The temporary encampment approval will not be  
renewable at this location.
7. The LHMM shall continue to employ indoor and outdoor security measures (such as  
closed-circuit cameras, lighting, access control of the "patio" area located in the  
unopened G Street Right-of-way, and neighborhood outreach) concurrent with the  
operation of the temporary encampment to help ensure individual and public safety on-  
site as well as [on] the abutting sidewalk. Additional measures may be identified and  
implemented as an outcome of monthly discussions between the LHMM, Police  
Department, and Planning and Community Development Staff held consistent with the  
requirements of Condition 4.
8. No children under the age of 18 shall be allowed to stay overnight in the temporary  
encampment, unless accompanied by a parent or guardian. If a child under the age of 18  
without a parent or guardian present attempts to stay at the encampment, LHMM shall  
immediately contact Child Protective Services and shall actively endeavor to find  
alternative shelter for the child.
9. On-site supervision must be provided at the temporary encampment at all times.

- 1 10. To limit outdoor waiting, the temporary encampment shall be open 24 hours per day.
- 2 11. Public health guidelines on food donations, preparation, handling, and storage, including
- 3 proper temperature control, shall be followed consistent with the Whatcom County Health
- 4 Department's requirements.
- 5 12. Facilities for dealing with trash shall be provided on-site throughout the temporary
- 6 encampment.
- 7 13. Subject to the limitations in RCW 35.21.915 and 19.27.042, LHMM shall ensure
- 8 compliance with all applicable Washington State laws and regulations, the Bellingham
- 9 Municipal Code, and the Whatcom County Health Department's regulations. LHMM shall
- 10 permit inspections by local agencies and/or departments to ensure such compliance and
- 11 shall implement all directives resulting therefrom within the specified time period.
- 12 14. The LHMM has agreed to formalize its neighborhood outreach efforts. To increase
- 13 successful interaction with neighbors and businesses and help minimize potential impacts
- 14 to public safety in the area surrounding the Drop-In Center, the Light House Mission
- 15 Ministries shall establish an "Ambassador Program." The purpose of this program is to
- 16 enhance outreach to both residents/businesses and those who are unsheltered in the
- 17 neighborhood. LHMM Staff members regularly walk the neighborhood during those
- 18 hours between morning wake up (approximately 7:00 AM) and evening check in for the
- 19 overnight accommodations (approximately 8:00 PM) at the Shelter.
- 20 15. Should conditions imposed herein not be met and/or circumstances change, the PCD
- 21 Director reserves the right to withdraw the approval or add appropriate conditions
- 22 necessary to protect the public health and safety.

23 *Exhibit C6.* The City does not dispute that there are potential impacts from the low-  
24 barrier shelter, but considering the entirety of the circumstances, the City determined  
25 that the impacts could be mitigated with conditions adequately to reduce impacts to an  
26 acceptable level for the life of the temporary permit. *Rick Sepler Testimony.*

- 27 26. In addition to the requirements of the permit conditions, Lighthouse has taken the  
28 following actions intended to prevent the shelter from being materially detrimental to the  
public welfare or substantially injurious to the property or improvements in the vicinity,  
including, but not limited to:
1. Fencing the vacant lots between the Drop-In Center and the Appellants' building  
with City assistance;
  2. Adding security doors to the Drop-In Center to prevent access by homeless  
individuals who were banned from the facility.
  3. Installing a patio in the unimproved right of way between the Drop-In Center and  
the Appellant's building with City assistance to give homeless persons a place to  
be other than the sidewalk;
  4. Adding a picnic table to the patio to give homeless individuals an alternative to  
sitting on the sidewalk;

5. Fencing the patio to prevent homeless persons from camping there at night;
6. Adding portable toilets to the patio to give homeless persons in the area a place to go to the bathroom;
7. Adding sound damping material to the portable toilets in response to neighbor complaints about slamming doors;
8. Installing potted plants with sprinklers along the fence line between the Drop-In Center and the Appellant's building to discourage homeless persons from sitting there;
9. Upgrading outdoor security cameras and lighting to improve the ability to identify the people engaging in the activities complained of by neighbors;
10. Participating in Crime Prevention Through Environmental Design ("CPTED") review with the Bellingham Police Department to make the area outside the Drop-In Center less conducive to criminal activity;
11. Implementing the Neighborhood Relations Program to increase awareness and understanding among neighbors, bridge the gap between LMM's guest and the community, and to increase safety in the neighborhood (See *Exhibit L21*); and
12. Implementing a program of multiple patrols of the area surrounding the shelter each day, including the Appellant's building, to discourage camping, assist homeless persons in crisis, and pick up litter. (See *Exhibit L12*).

*Testimony of Hans Erchinger-Davis, Bridget Reeves, Dwayne Neufeld, and Bill Grimmer; Exhibits L12 and L21.*

27. The City has also taken steps beyond conditioning the permit in an attempt to prevent the low-barrier shelter from having detrimental impacts on the surrounding neighborhood. These steps include (but are not necessarily limited to):
1. Installation of 24-hour surveillance cameras that record all activity on the sidewalk in front of the Drop-In Center and in front of the Appellant's building;
  2. Installing crime watch signs along the sidewalk in front of the Drop-In Center and the Appellant's building that state: "STREETS AND HOMES IN THIS NEIGHBORHOOD UNDER 24-HOUR VIDEO SECURITY WITH LOCAL LAW ENFORCEMENT";
  3. Bellingham Police Department has Rented offices on the first floor of the Appellant's building to establish a "Holly Street Outreach Center" that would provide a Police presence with dedicated emergency vehicle parking in front and space for the Community Paramedic, Homeless Outreach Team (HOT Team), and the Ground-level Response and Coordinated Engagement (GRACE) program near the shelter;
  4. Increasing daily foot and bicycle Police patrols in the area near the shelter;

5. Increasing patrols of the City's camp clean up coordinator in the area near the Shelter to ensure no camps are set up along the fence line between the shelter and the Appellant's building, and if there are, to do appropriate outreach and enforcement; and
6. Planning for adding a behavior health officer to the Police Department beginning in mid-2019, which is intended to will be the Police equivalent of the Community Paramedic, to be stationed at the Holly Outreach Center.

*Testimony of Clark Williams and Police Chief David Doll; Exhibits C28, C29, C30, C31, C32, and C41.*

#### *Appellant's Alleged Impacts*

28. Conteslin LLC purchased 1111 W. Holly Street for a purchase price of \$821,500 in January 2016. Mr. Belsher visited the building three to four times before purchasing it. At time of purchase, the office units were fully rented to various small businesses including acupuncturists, counselors, massage practitioners, an accountant, and a small engineering firm. He felt confident in his purchase of the commercial building as a business venture in part due to its location on a busy road, nice views from some of the units, and generous parking. The property has 23 off-street parking stalls, five on-site outside the parking garage and about 18 inside the garage, as well as non-metered on-street parking, meaning that, if the offices were full, customers of his tenants could park on W. Holly Street. Mr. Belsher met Mr. Erchinger-Davis of Lighthouse Mission Ministries a few weeks later. He had some peripheral knowledge of the Lighthouse activities, but at and around the time of purchase, he experienced no concerns about Lighthouse. There were no crowds on the streets; there were no people congregating on the sidewalk all day and the homeless people passing through did not speak with his tenants. He had no tenant complaints about the Drop-in Center, which appeared to be similar to any other commercial use. *Brent Belsher Testimony.*

29. Subsequently, as described by Mr. Belsher, "all hell broke loose in October 2016." Mr. Belsher and his tenants suddenly noticed that the parking garage became a magnet for problem activities. It became suddenly common to find human feces, urine, and vomit in the parking garage. Someone urinated in the stairwell, creating an odor problem it took more than three cleanings to eliminate. If it rained, people would shelter inside to smoke, or to sleep. Tenants frequently reported people passed out by the elevator or sleeping in the landscaping. Litter, including liquor bottles, broken glass, clothing, and drug paraphernalia, became a daily report. Soon there was a visible, beaten path through the vacant lot down to the railroad tracks, with more garbage there. Mr. Belsher and his tenants reported seeing apparent drug transactions in vehicles. A naturopathic physician who maintains an office in the building, Jessica Van Dusen, testified that her husband once had a knife waived at him by someone he associated with the shelter. A patient of hers reported having seen someone shooting up. Dr. Van Dusen once asked two men smoking pot at the front entry of the Conteslin building to

1 leave and they verbally intimidated her. Fights and shouted profanities from the  
2 sidewalk by the Drop-In Center can be heard inside treatment rooms in the Conteslin  
3 buildings. Multiple practitioners reported that their patients were afraid to walk alone  
4 to their cars after treatments. Mr. Belsher installed a locking electric gate on the  
5 garage, which successfully kept people out overnight, and strung barbwire to keep  
6 people from going down to rail road tracks. The cost was \$24,000 because the gate  
required a building permit and electrical work. *Exhibits A1, A2, A3, A4, A5, A6, A7,  
A8, A16, A17; A39, A40, and A43; Testimony of Brent Belsher, Jessica Van Dusen,  
Jessica Perry, and Jill Likkel.*

7 30. At one point, Mr. Belsher asked apparently homeless persons in the garage to relocate to  
8 the Drop-In Center. He testified that one individual grabbed him and threatened to  
9 punch him. Another man got very angry when he saw Mr. Belsher taking photos and  
10 was verbally threatening towards him. Since that time, Mr. Belsher has instituted a  
11 security protocol among tenants. Rather than having anyone confront people in the  
garage or on Conteslin property directly, he has asked that they call both Lighthouse and  
the Police. The last person leaving the garage at night closes and locks the gate.  
*Testimony of Brent Belsher and Jessica Perry.*

12 31. Appellant witnesses testified that when the Drop-In Center became a 24-hour shelter,  
13 there was suddenly a constant Fire and Police Department presence. Concerned that the  
14 presence of law enforcement also detracts from the desirability of his commercial  
15 building, Mr. Belsher requested statistics from the Police Department for the years 2014  
16 through 2018. Mr. Belsher asserted the following numbers of Police visits per year: in  
17 2014 – 22 visits; in 2015 – 20 visits; in 2016 through October – 17 visits; from October  
18 2016 to October 2017 – 190 visits; from October 2017 to October 2018 – 418 visits;  
19 between July 2016 and the time of the instant public hearing, there had been 148 Police  
20 visits, including 36 assaults. Others, including Mr. Belsher's real estate broker, echoed  
21 his comments that Police and Fire are at the Drop-In Center so often it creates a  
22 discouraging effect on potential customers for area businesses. *Exhibits A16, A27, A29,  
A59, A77, and A78; Testimony of Brent Belsher, Jason Loeb, and Jessica Perry.* The  
23 Appellant submitted the written testimony of former City of Bellingham Police Chief  
Don Pierce. Former Chief Pierce wrote that he found the number of assaults reflected in  
the Police call data at Exhibit A29 particularly troubling and that, in his opinion, the  
"unacceptable level of public disorder... should not be tolerated", and that the City  
should consider revoking the license of the offending establishment in the interest of  
public safety. *Exhibit A74.*

24 32. A primary concern of the Appellant's witnesses was the frequent gathering of homeless  
25 individuals on the sidewalk between the two properties. Many of them bring personal  
26 property with them, including bed rolls, shopping carts, suitcases, bags, bicycles, and  
27 other items, with which they obstruct the sidewalk. Testimony from several people  
stated that there are two to three dozen people on the sidewalk outside the Drop-In



Center, in front of the vacant lot, and in front of the Conteslin building, daily. The Appellant contends that these persons obstruct or block the sidewalk so that other pedestrians cannot use it, that Lighthouse declines to do anything about it, and that they have not seen the City enforcing nuisance laws by removing people who obstruct the sidewalk. The customers and clients of small businesses in the Conteslin building report to Mr. Belsher's tenants that they do not feel comfortable driving, parking, and walking between and among the people on the sidewalk, and that the situation deters them from coming to the building. Dr. Van Dusen testified that her patients are not interested in coming to the building for services. Other practitioners have moved out. She stated that she has called the Police many times, and she calls Lighthouse weekly to complain. *Exhibits A1 and A7; Testimony of Jessica Van Dusen, Brent Belsher, and Kip Wayerski.*

33. Neighboring property and business owners supported the Appellant's arguments, offering their own experiences. An attorney who works out of a nearby building at 1402 F Street noted that issues with homeless persons did not become problematic until 2017, when he noticed an increase especially in drug activity and a concentration of people with mental health issues. He associated these changes with the shelter because he has represented people who access services or stay there, and they have informed him of drug activities at or related to the shelter. He once observed a drug deal outside his building. Tents began to pop up on his property. When he contacted Lighthouse to inform them and request their assistance, he felt he was told that they are not responsible for all the homeless people in the City. Mr. Wayerski installed a security camera system. Resident owners of the units at the Olympia Condominiums located at 1301 W. Holly Street reported increased litter and drug paraphernalia on their property, yelling and fights at all hours, and people relieving themselves or using drugs in the doorways to their building. Neighboring resident Max Lewis testified that, before the low-barrier shelter became year-round, he and his wife never had occasion to call the Police about homeless activities in the neighborhood, but since it opened, he has called the Police at least half a dozen times and has called code enforcement at least 10 times. Similar issues were reported by an owner at the Marina Vista Condos at 1401 W. Holly Street. One neighboring resident testified that he believes the homeless have been shifted from downtown into this neighborhood, which has been overwhelmed, submitting that there are about 25 predatory persons preying on the remaining homeless. When Mark Gale once called the Mission to discuss these problems, he was told the Mission could not be responsible for things happening blocks away. Mr. Gale asserted that the low-barrier shelter attracts the bad actors to the neighborhood. Another owner of long-term rental residential units in the neighborhood testified that her tenants have reported homeless people camping in their carports and yards, homeless people using the fence around their property as a latrine, theft of bicycles and recyclable materials, and increased fighting, yelling, and litter around their homes. Several surrounding property owners testified that they have modified their regular walking routes to avoid passing in front of the

Drop-In Center. *Testimony of Kip Wayerski, Max Lewis, Alice Cords, and Mark Gale; Exhibits A44, A45, A48, A49, A51, A52, A53, A54, A56, A57, A58, A73, A79, and A80.*

34. The Appellant hired Tom Follis "to provide the client with the determination of any diminution in value, if any, due to adverse externalities that are apparent in the W. Holly Street corridor as it relates to the income earning potential of the subject property." *Exhibit A75, page 13.* Again, Mr. Belsher had purchased the property in January 2016 for approximately \$821,000. As of October 15, 2018, Mr. Follis appraised the Appellant's property at only \$700,000 because of adverse externalities (e.g., the presence of homeless people in the W. Holly Street corridor) and at \$1.3 million assuming no adverse externalities (e.g., the absence of homeless persons on the street). The \$700,000 appraised value includes consideration of an approximate fair market lease space rate of \$14 to \$15 per square foot, but because of the adverse externalities, the appraiser projected that the owner would be required to drop rents as low as \$7 to \$8 per square foot to fill empty units. *Exhibit A75; Tom Follis Testimony.*
35. At the time of purchase, there was a large amount of deferred maintenance required for the Conteslin building. Since purchase, Mr. Belsher has spent \$100,000 on maintenance, including a new roof, siding on one side, exterior and interior paint, fixing handrails and other miscellaneous repairs, in addition to the costs of installing secure fencing and the electric gate. *Brent Belsher Testimony.*
36. Mr. Belsher testified that if the low-barrier shelter stays in place for five years, he will not survive the economic injury. He argued that the ordinance allowing the Temporary Permit mandates that the use cannot be detrimental but, under the current circumstances, his business is being strangled. Four of the original tenants left, and two others have gone to month-to-month leases to preserve their right to relocate. One acupuncturist expressly told him she was leaving because it is not a safe place to do business. *Exhibit A13.* His building is now only 60% occupied, and he is unable to rent the empty spaces. Mr. Belsher's real estate broker, Jason Loeb, testified about his efforts to re-rent spaces emptied since the shelter began operating, and he also corroborated that some tenants have left expressly due to the presence of the shelter next door. Mr. Loeb testified that the highly visible presence of the homeless has a chilling effect on the ability to lease space. Potential tenants sometimes express reasons for not being interested, and when they do it is usually about the shelter; many other people just don't return communications or follow up, and he assumes that many of these people are similarly affected by the shelter. *Exhibits A10, A13, A14, A15, A16, and A17; Testimony of Jessica Van Dusen, Brent Belsher, and Jason Loeb.*
37. Lighthouse offered to buy the building in January 2018 for \$950,000. Mr. Belsher told Lighthouse he was looking for closer to \$1,500,000. He noted he would have lost money on the transaction after real estate fees considering the maintenance he'd conducted. He testified that he did not buy the building to flip it; he intended it to be an

1 ongoing commercial venture. He was only given 24 hours to decide. Since the low-  
2 barrier shelter converted to 24/7 year-round operation, he has only rented two empty  
3 spaces. One of the two new tenants is the Bellingham Police Department, which is  
4 paying \$14.36/square foot (near market rate, according to Mr. Follis); the other new  
5 tenant is paying \$11/square foot. *Brent Belsher Testimony; Exhibit A75*. According to  
6 Appellant witnesses, the presence of the Police Department in Conteslin's building  
creates both positive and negative appearances. That the Police are there is a good  
thing, but that they need to be there is seen as a bad thing. *Testimony of Jason Loeb and  
Tom Follis*.

7 38. The Appellant disputes that the low-barrier shelter use is a permitted use in the  
8 Commercial/Old Town Overlay zone. When Mr. Belsher asked Planning Director Rick  
9 Sepler under what use category the shelter was a "permitted" use, Mr. Sepler issued the  
10 Code Interpretation stating it was allowed because it was similar to other listed  
11 permitted uses in the zone. Mr. Belsher argued that the low-barrier shelter is  
12 distinguished from the similar listed uses, including service, care, and day treatment  
13 facilities, because those types of state licensed facilities provide professional services to  
14 target populations for a fee, which is not true of the shelter. He argued that the  
spectrum of services provided by the shelter and the resulting impacts are not similar to  
an office, hotel, or residential use. Finally, the Appellant argued that a low-barrier  
shelter can only be allowed as a conditional use in a Commercial zone pursuant to  
Comprehensive Plan policy L-27. *Brent Belsher Testimony; Exhibits R9, R14, and R18*.

15 39. Further, with respect to the Temporary Permit, Mr. Belsher contended that the  
16 conditions imposed are not capable of mitigating the detrimental impacts of the shelter  
17 to his property from homeless people congregating on the sidewalk and daily Fire and  
18 Police visits, which have not reduced in number since the permit was issued. Appellant  
19 witnesses acknowledged that sometimes Lighthouse Staff or volunteers pick up litter or  
20 hose down the sidewalk, but they contend these actions are not taken often enough to  
21 make an overall improvement. They submitted that the code of conduct lacks effective  
enforcement, at least in part because it does not apply to those who are attracted to the  
people served by the shelter (e.g., drug dealers and predatory persons). *Testimony of  
Brent Belsher, Kip Wayerski, Jessica Van Dusen, and Mark Gale; Exhibits R9, R14, and  
R18*.

22 40. Additionally, the Appellant disputed the asserted May 2022 termination of the  
23 Temporary Building Encampment Permit. Based on the City Building Official's  
24 approval of an overnight shelter in the Drop-In Center on December 11, 2014, the  
25 Appellant argued that any temporary approval must run from that initial date, meaning  
26 the five years contemplated in the Emergency Ordinance (if deemed to be within the  
27 definition of temporary) would expire December 11, 2019, not in May 2022. *Brent  
Belsher Testimony; Exhibit A18, R9, R14, and R18*.

41. Finally, if the use is allowed to remain under either decision, the Appellant argued that Lighthouse should be required to take additional available steps to mitigate the impacts his evidence identified. There is a parking lot behind the Drop-In Center and Agape Home that the Appellant argued could be converted to a courtyard with benches, a smoking pad, and covered areas. Those accessing the low-barrier shelter and/or Drop-In Center could enter from the rear, which the Appellant argued would reduce the impact of people congregating on W. Holly Street to the customers and traffic headed to his building. The Appellant contended that without this, or other significant changes, the approved low-barrier shelter would remain materially detrimental and substantially injurious to his economic interests as well as to the interests of the businesses operating out of his building and of other property owners in the vicinity. *Brent Belsher Testimony; Exhibits R9, R14, and R18.*

*City Witness Testimony*

42. A 2018 City survey identified homelessness as the number one concern of Bellingham residents. In 2017, the City received 405 complaints of illegal homeless camps throughout the City. Bellingham Police Department has a fulltime camp cleanup coordinator whose job is to deal with the large number of illegal homeless camps. A 2018 City publication reported that the City spends \$4.9 million dollars per year to address the homelessness crisis by partnering with organizations that house or serve homeless and low-income residents. *Exhibits C21, C34, and C39; Police Chief David Doll Testimony.*

43. In addition to funding, the City has taken the following actions intended to address the issue of homelessness:

- Searched for a site for a permanent homeless shelter;
- Allowed a tent encampment at City Hall in December 2017;
- Provided dumpsters and portable toilets at key locations in the City to serve the homeless;
- Adopted Ordinance 2018-10-019, which provides the final regulations for temporary tent encampments, safe parking areas, tiny homes, and building encampments to house the homeless;<sup>7</sup>
- City residents voted to renew the Home Fund in November 2018, which provides dedicated funding for affordable housing in the City;

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<sup>7</sup> The undersigned takes notice that this Ordinance and BMC Chapter 20.15, Temporary Shelters for the Homeless, were both adopted after the date of the two decisions under appeal. The approved Temporary Permit vested to regulations in effect prior to adoption of these regulations, and prior to the subsequent amendment of the permitted uses table at BMC 20.35.065.

*FINDINGS, CONCLUSIONS, AND DECISION*

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H:/DATA/HEARING EXAMINER/DECISIONS/Conteslin Appeal 1013 W. Holly Street

OFFICE OF THE HEARING EXAMINER  
CITY OF BELLINGHAM  
210 LOTTIE STREET  
BELLINGHAM, WA 98225  
(360) 778-8399

- Began work on final ordinance for permanent shelters for the homeless;
- Prepared to issue a Temporary Tent Encampment Permit for a 2019 winter tent encampment at City Hall; and
- Organized a women and children emergency cold weather drop-in center at the City Library.

*Testimony of Rick Sepler, Clark Williams, and Police Chief Doll; Exhibits L25, A63, A64, A65, A66, A67, A68, A, 69, A70, A71, A72, C36, and C42.*

44. Addressing the concern about people congregating on the sidewalk, City Staff testified that it is not uncommon that land uses involve occasional or even regular congregating of people on the sidewalk. The general public has the right to be in the public right-of-way; however, they are not allowed to block the sidewalk or to intimidate passersby. The only complaints filed with the City have been about alleged verbal assaults. Police Chief Doll testified that the Police Department lacks authority to remove peacefully assembled people from the sidewalk; he noted that there have not been calls to the Police regarding homeless people obstructing the sidewalk, and that BPD has therefore not responded to this particular concern. The Police Chief noted that, while Lighthouse agents should suggest and promote that shelter guests not block the sidewalk or loiter in the neighborhood, they lack authority and skills for enforcing nuisance-related or other laws. On a related point, the Police Chief testified that Lighthouse's "neighborhood ambassadors" are highly useful liaisons between Lighthouse and all groups in the neighborhood, both homeless and property owners, but he emphasized that Lighthouse employees should act as eyes and ears on the street and should call the Police in the event of fights or situations involving acute mental health or substance abuse situations. *Testimony of Rick Sepler and Police Chief David Doll.*

45. Director Sepler testified that the City is committed both to helping the unsheltered and to protecting property interests. He acknowledged that in trying to find the best balance, impacts might arise that take some time to mitigate. However, the permit is conditioned to require at least monthly meetings between the City and Lighthouse, intended to provide speedy responses to issues as they arise. In reality, these meetings are occurring much more frequently than once a month. To date, the meetings have been focusing on controlling behaviors on the street. Also intended to control behaviors on the street are the City's high-resolution cameras, which went online about three days prior to the public hearing. Currently the Police and Fire Departments and City Administration have access to them. Knowledge that individuals can be identified is expected to reduce or eliminate prohibited and criminal behaviors in a preventative manner, as well as to allow Lighthouse to address inappropriate behavior with the individuals responsible, and to provide a record for law enforcement if needed. *Testimony of Rick Sepler and Clark Williams.*

1 46. One complaint that the City had received was regarding the repeating sound of the  
2 outhouse doors slamming late at night, from the outhouses provided by the City in the  
3 patio area. This feedback was communicated, and Lighthouse acted on that feedback by  
4 installing sound-proofing material to reduce or eliminate that particular noise. The  
5 Police Chief testified that this was an example of the effective working relationship he  
6 feels Lighthouse and the City should be expected to have with neighbors and indicated  
7 he felt that Lighthouse had been responsive when neighbors brought feedback to their  
8 attention. *Police Chief David Doll Testimony.*

9 47. Addressing concerns about concentrating homeless persons in the neighborhood,  
10 Director Sepler noted again that the permit is temporary, and the low-barrier shelter is  
11 expected to move by May 2022. In the meantime, there are advantages to both the City  
12 and the shelter guests when they congregate in one area. Ease of service provision and  
13 ease of emergency response are obvious advantages. The daily Bellingham Police  
14 Department patrols and the active outreach at the Drop-In center by the HOT Team and  
15 paramedics are evidence of the City's physical enforcement-empowered presence in the  
16 area. This presence should reduce impacts by discouraging unacceptable behaviors, and  
17 it shows the City's commitment to do more than just dump the homeless in this  
18 neighborhood. Even considering the public comment received and the testimony from  
19 Appellant witnesses, the Director testified that in his professional opinion, the shelter is  
20 not materially detrimental or substantially injurious to surrounding properties as  
21 conditioned. *Rick Sepler Testimony.*

22 48. Addressing the concerns about the appropriateness of the processes used to issue the two  
23 approvals under appeal, Director Sepler indicated that the winter shelter at the Drop-In  
24 Center began in 2014, before he was Planning Director for the City, and its approvals  
25 were renewed by a process initiated before his tenure began. When the City received the  
26 Appellant's request for a code interpretation, Planning Staff reviewed the existing low-  
27 barrier shelter use for its characteristics as compared to other uses allowed outright in  
28 the zone.<sup>8</sup> Finding several similarities in the permitted uses list (service care, day  
treatment center, hotel, eating establishment, etc), the Director ultimately concluded it is  
a permitted use under the "similar uses" provision specific to the zone. In reaching this  
determination, review of the land uses expressly prohibited in the zone provided useful  
guidance. Staff noted that the Mission had been in the neighborhood for decades, and it  
is also a similar use. The authors of the Code Interpretation did not intentionally find

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<sup>8</sup> Zoning codes cannot identify every single use in the permitted uses table. Planning Staff testified that it is common to be asked whether a use that is not listed is allowed in a zone; for example, naturopaths and acupuncturists are not listed in the table. Also, in the Bellingham Municipal Code, it is not common for permitted uses tables to identify prohibited uses, which Staff submitted means that special consideration was given to which uses should be prohibited in the Old Town Overlay District when the district was adopted. *Kurt Nabbefeld Testimony.*

1 that the use was not a conditional use in order to avoid public process for conditional use  
2 permit review.<sup>9</sup> Code interpretations are Type I land use processes not subject to public  
3 notice and comment requirements, but they are expressly appealable. Of course, in the  
4 case of the instant Temporary Permit, there was notice of application and extensive  
public comment. *Testimony of Rick Sepler and Kurt Nabbefeld; BMC 24.10.040.B.8; Exhibit C11.*

- 5 49. Specifically addressing the Appellant's contention that Comprehensive Plan Policy LU-  
6 27 required conditional use permit review of the low-barrier shelter, the Planning  
7 Department's Development Services Manager testified that the Code Interpretation  
8 decision is consistent with Policy LU-27 because service care uses are permitted outright  
9 in the Old Town Overlay District, and the low-barrier shelter most closely met the code  
10 definition of service care land use in the zoning code in effect at the time the decision  
11 was issued. Also, the Planning Director testified that Comprehensive Plans are  
12 aspirational and intended to guide development regulations as new regulations are  
13 adopted in the future. It is the actual zoning regulations that control which uses are  
14 allowed, rather than Comprehensive Plan policies. The regulations in effect at the time  
15 of both the requested code interpretation and the application for temporary encampment  
16 permit did not require conditional use review. Mr. Sepler testified that it takes time for  
17 the regulations to evolve to match the guidance established in the Comprehensive Plan.  
18 Because the low-barrier shelter is not going to be a permanent use, Planning Staff did  
not consider its consistency with the Old Town Comprehensive Subarea Plan to be of  
highest importance; as in construction impacts, the impacts from the low-barrier shelter  
would be a temporary experience in the neighborhood. Finally, with respect to Policy  
LU-27, Mr. Sepler testified that no land use policy of the Comprehensive Plan could  
take precedence over the explicit directive of RCW 35.21.915, which he argued  
preempts the City from imposing zoning controls on shelters operated by religious  
institutions on property they own, whether inside or outside buildings, except as  
necessary for life safety.<sup>10</sup> *Rick Sepler Testimony.*

19  
20 <sup>9</sup> The Code Interpretation was drafted by Mr. Nabbefeld and finally issued by Mr. Sepler. *Testimony of Rick Sepler and Kurt Nabbefeld.*

21 <sup>10</sup> Lighthouse also offered argument based on RCW 35.21.915 and the state and federal Constitutions, asserting  
22 that City regulation of anything beyond public health and safety, up to and including shutting down the shelter  
23 altogether, would unduly burden Lighthouse's religious expression. Lighthouse argued that shutting down the  
24 overnight shelter would not serve a state interest sufficiently compelling to prohibit Lighthouse from ministering to  
25 the homeless in this way, rendering zoning and permitting arguments irrelevant. The instant decision does not  
26 address the statutory or Constitutional bases for the two City approvals, but rather only addresses the criteria  
27 established in the City Code and Ordinances on the grounds that a hearing examiner's jurisdiction is limited to that  
28 delegated expressly or by necessary implication from the local elected body. *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984). Naturally, in the event of appeal of the instant decision, such statutory and  
Constitutional arguments would be addressed by bodies with subject matter jurisdiction that extends into these  
arenas.

1 50. Director Sepler testified that configuration of the 1013 W. Holly Street building is  
2 unlikely to satisfy the requirements for temporary encampment in the final rules being  
3 promulgated for low-barrier shelters by the City. This is consistent with the Temporary  
4 Permit as issued, because condition 6 prohibits renewal at this location. Mr. Sepler  
5 testified that the City remains committed to implementation of the Old Town Subarea  
6 Plan; Old Town is intended to be an area of profound growth for the City. A plan to  
7 locate a better property for a low-barrier shelter has been underway since at least 2016.  
8 The City and Lighthouse have entered a non-binding agreement to find, fund, and  
9 operate a low-barrier shelter with up to 200 beds, through which supportive services  
10 such as those currently provided at the Drop-In Center could be offered as a means of  
11 helping people move towards permanent housing. Locational criteria include the  
12 following preferences: light industrial land use (not commercial or residential); site size  
13 adequate to accommodate an approximately 11,000 square foot building; proximity to  
14 the Lighthouse Mission and/or Maritime Heritage Park where the homeless population  
15 is existing; City ownership or a willing seller; and a location not on W. Holly Street.  
16 Program refinement and site selection review have been ongoing. *Rick Sepler*  
17 *Testimony; Exhibits A63, A64, A69, A70, and A71.*

18 51. With regard to the Appellant's request to close the existing low-barrier shelter, Mr.  
19 Sepler contended that according a ruling by a 9th Circuit Federal Court, if there is  
20 nowhere to move homeless to, they cannot be moved. When the City "sweeps" illegal  
21 encampments, they are relocating, not just chasing away, those homeless people. If this  
22 facility closes, there is nowhere to send the people who are staying at this facility. They  
23 would end up camping. This five-year permit gives the City the time to develop  
24 programs for low-barrier shelters in more appropriate locations. Of note, the five-year  
25 approval does not run from the July 25, 2018 date of permit issuance, but rather from the  
26 previous timeframe established in the Emergency Ordinance; it expires in May 2022.  
27 *Rick Sepler Testimony; Exhibit C12.*

28 52. The City argued that the increase in criminal activity asserted by the Appellants in the  
neighborhood surrounding the low-barrier shelter is not materially detrimental to the  
welfare of the public at large. Police Chief David Doll personally reviewed reported  
criminal activity within 1,000 feet of the Drop-In Center between September 1, 2014  
and September 1, 2018. Looking at the same statistics the Appellant put forward  
regarding Police response to the neighborhood surrounding the Drop-In Center, Chief  
Doll focused on primary Police reports for criminal activity and 911 calls associated  
with the Drop-In Center, as well as Police reports for businesses and residences near the  
Drop-In Center between July 2014 to October 2018. He determined that the number of  
primary Police reports ("criminal events") rose from 96 reports for the period of  
September 1, 2014 through September 1, 2016 to 131 reports for the two-year period  
from September 1, 2016 through September 1, 2018. During the same time period, calls  
to the Police from around the Drop-In Center increased from 20 in 2014 to 643 in 2018,  
meaning calls for Police response have in fact gone up in the area surrounding the Drop-



1 In Center. Chief Doll testified that from review of the reports, it was not possible to  
2 determine whether the persons committing the crimes were associated with the Drop-In  
3 Center. In one event, a person staying at the Shelter died after being taken into Police  
4 custody for aggressive behavior at the Drop-In Center; the coroner found that the cause  
5 of death was drug use related. *Police Chief Doll Testimony; Exhibit C43.*

6 53. While acknowledging the seriousness of crimes against homeless persons, the Chief  
7 sought to highlight the fact that, with two exceptions, in all of the more serious cases  
8 (which included assaults and burglary) both the perpetrator and the victim of the  
9 assaults were homeless individuals; none of the events involved pedestrians passing  
10 through the area being assaulted. *Police Chief Doll Testimony.*

11 54. The Police Chief submitted the opinion that incidents such as the relocation of the  
12 homeless person sleeping in a nearby rental dwelling carport by the Police to the low-  
13 barrier shelter was a good thing, a positive outcome. Chief Doll testified that the low-  
14 barrier shelter functions as an essential service that is required for the overall good of  
15 the City. Closing the shelter would result in all of its overnight guests (a number that  
16 typically ranges from 60 to 80 people) sleeping outside, at which point they would  
17 become vulnerable to exposure-related health risks and crime. Without the shelter, the  
18 City cannot enforce against (clean up) illegal homeless camps because there would be  
19 nowhere for the City to relocate the homeless individuals to. Without a low-barrier  
20 shelter, the number of homeless people sleeping in commercial doorways and  
21 residential carports would go up. The Police Department employee tasked with  
22 cleaning up illegal camps reported that the number of illegal tent camps has gone down  
23 since the shelter opened. *Police Chief David Doll Testimony.*

24 55. With regard to Bellingham Police Department's recently initiated lease agreement in the  
25 Appellant's building, Chief Doll testified that he anticipates the office space there  
26 would be used regularly as a place officers could go to write reports, with dedicated  
27 parking out front for law enforcement vehicles. Officers responding to incidents at the  
28 Drop-In Center would be able to bring involved individuals to these nearby offices to  
get them away from the Center, which could expedite de-escalation. The Chief  
surmised that the Ground-level Response And Coordinated Engagement (GRACE)  
Team might operate out of those offices, as might the Housing Outreach Team (HOT),  
the Community Paramedic, and/or potentially a newly created full time position of  
behavioral health officer. Police personnel have not yet moved into the offices but plan  
to do so shortly after finalizing security measures to protect Police computer databases,  
in approximately mid-2019. *Exhibit C30; Police Chief David Doll Testimony.*

56. With respect to impacts on property values, Planning Staff disagreed that the  
concentration of homeless in the vicinity was necessarily impacting property values  
adversely. As an example, Staff testified about a mixed-use building on F Street near  
the intersection with Astor Street, not far from The Mission and Mr. Wayerski's

property, with 31 units. In this new building, studio units are renting for approximately \$935/ month and one-bedroom units are renting for \$1,200 to \$1,400/month. The same developer has begun developing a proposal for another mixed-use project with 44 units. Staff submitted that, in the mind of at least that developer, property value impacts near the Lighthouse facilities are not a problem. *Kurt Nabbefeld Testimony.*

*Lighthouse Witness Testimony*

57. The term low-barrier shelter means access to indoor overnight shelter for people who have mental health problems and/or addiction issues, even if they are actively using; no identification or alcohol or drug testing are required for entry. Mr. Erchinger-Davis submitted that all people accessing the Drop-In Center have a life dominating problem, typically but not always related to addiction or mental health, that prevents them from maintaining secure housing. Lighthouse operates the Drop-In Center as an entry point through which homeless people can begin to find services and support they need to get off the streets. The Drop-In Center has a program capacity of about 150 to 190 people. At night, up to 80 people sleep on mats on the floor in the Center (in its function as shelter); 70 individuals sleep overnight at The Mission; and another 40 find overnight accommodations at Fountain Community Church. When the low-barrier shelter use began at the Drop-In Center, the number of people sleeping indoors at the Center would drop by about half in the summers. Now, it stays full year-round. Individuals who receive services at the Drop-In Center often gradually move on to different Lighthouse programs over time. Men go into the Mission, and into the Ascent Program, the transitional housing program for those in recovery from substance abuse. Eligible women and women with children move on to the Agape Home. At the Drop-In Center, guests have many opportunities not available to them elsewhere, including: vocational guidance, counseling by volunteers and student interns from Western Washington University, group therapy, work opportunities at the Drop-In Center for folks in the other Lighthouse Mission facilities, training on coffee shop employment, access to Alcoholics Anonymous meetings, and medication dispensation and management through third party agencies. *Exhibit L4; Testimony of Hans Erchinger-Davis and Bridget Reeves.*

58. The low-barrier shelter is staffed by at least two employees overnight, in addition to the volunteers and employees of the various third-party agencies who provide services out of the facility during business hours. These include but are not limited to: SeaMar Community Health, Project for Assistance in Transition from Homelessness (PATH), United Healthcare, Bellingham Library, and LAW Advocates. Lighthouse Staff conduct several internal initiatives intended to reduce neighborhood impacts. The Neighborhood Ambassador Program is intended to conduct outreach to those in the neighborhood not making full use of the Drop-In Center's services, as well as to engage participants in garbage pickup, to address nearby car camping, and to promote group self-monitoring to reduce conflicts between the Center and its neighbors. The Good Neighbor Program is an outreach effort intended to inform surrounding business

1 owners and residential neighbors about, and engage those who are interested in, the  
2 Center's programming. Northwest Recycling and Mr. Wayerski's law firm are among  
3 the business neighbors which, in consultation with Lighthouse, have taken steps on  
4 their own properties to manage and reduce the impacts of increased homeless persons'  
5 presence in the neighborhood. Additionally, Lighthouse is currently exploring  
6 development of a program through which people accessing shelter and services at the  
7 Drop-In Center would gain employment with Northwest Recycling, as a means of  
8 providing job skills and resume-building to help individuals transition into  
9 employment. Residents in a nearby condominium association reached out, toured the  
Drop-In Center, and made donations. Neighborhood outreach coordinator Dwayne  
Neufeld testified that he feels he has a good working relationship with the Police  
Department's Neighborhood Officers and with the Planning and Parks Departments at  
the City. *Testimony of Dwayne Neufeld, Hans Erchinger-Davis, and Bridget Reeves;*  
*Exhibits L12 and L21.*

10 59. According to Lighthouse witnesses, Lighthouse has expended effort over the years to be  
11 a good neighbor expressly to the Appellant's building. The previous owner of the  
12 Appellant's building, Robin Williams, was engaged in dealing with issues that arose  
13 between the two uses, both by solving problems herself and by regularly contacting  
14 Lighthouse. In 2015, she granted Lighthouse permission to "conduct rounds" on her  
15 property. In contrast, Mr. Belsher was in regular communication with Lighthouse in the  
16 months immediately after his purchase of his property, but that ceased in approximately  
17 June 2017. Nevertheless, Lighthouse proactively sought Mr. Belsher's permission to  
18 access his security cameras through an iPad to monitor activities in his parking garage  
19 that could be related to the Drop-In Center, which initially he agreed to, but when Mr.  
20 Belsher did not provide Lighthouse an updated IP address, they were no longer able to  
21 connect to his system. Subsequently, when Mr. Belsher asked Lighthouse to create a  
22 covered outdoor space for smoking, the covered smoking area in the G Street right-of-  
way was built within a matter of weeks. Once when Mr. Belsher claimed that a person  
associated with the Drop-In Center urinated in the stairwell of his building, Lighthouse  
steam cleaned the carpet in his garage. When he was not satisfied with the initial  
efforts, Lighthouse agents returned to steam clean the same area two more times. Mr.  
Belsher remained dissatisfied and insisted that Lighthouse reimburse him nearly \$600  
for professional cleaning services, despite the lack of evidence that the issue was caused  
by anyone affiliated with the Center. *Testimony of Bridget Reeves, Hans Erchinger-*  
*Davis, and Brent Belsher; Exhibits L13, L15, L16, L17, and L18.*

23 60. In November 2016, Lighthouse Associate Executive Director Bridget Reeves delivered  
24 a letter, with her business card and the "Old School Guide to the Drop-In Center" to  
25 neighbors. The letter notified neighbors of the Center's expanded services, informed  
26 them that Lighthouse would increase litter and security patrols, and asked neighbors to  
27 contact Lighthouse and/or BPD about "street behavior" in the neighborhood. Currently,  
Lighthouse conducts "rounds" six times a day around the Appellant's property. These

rounds include guests who are assigned to clean up around the Appellant's property as a part of their chores three times per day (after each meal), as well as Lighthouse staff who patrol the outside of Appellant's property and the immediate vicinity of Lighthouse's buildings two to four times per night. Activities include cleaning up trash and moving campers along. *Testimony of Hand Erchinger-Davis, Bridget Reeves, and Bill Grimmer; Exhibits L9, L11, L12, and L13.*

61. Lighthouse Staff make an effort to ensure that people accessing the Drop-In Center and low-barrier shelter do not obstruct the sidewalk outside the Center.<sup>11</sup> As stated in the Temporary Permit conditions, above, the Drop-In Center maintains a Code of Conduct. Addressing "sidewalk conduct", the Code of Conduct specifically prohibits "threatening or offensive language or actions" and requires Drop-In Center guests to "[respect] the property and rights of others in the neighborhood" and "not [violate] the law inside the Center's facility and on or around its property". The Code of Conduct specifically excludes from acceptable behaviors "urinating or defecating near or outside the facility or near our neighbors" and "loitering or trespassing on property within a three-block radius of the center." It also stipulates: "no chaining bikes to the fence or working on them in front of the [Center]"; "no congregating at the Drop-In Center or in the surrounding neighborhood for more than five minutes when the Center is not open for services"; and "no overnight camping at the Drop-In Center or any of the surrounding neighborhood within three blocks of all Lighthouse Mission properties". Guests are required to sign an acknowledgement of the code of conduct, which is posted at the front door of the Center and in various prominent locations inside the Center. Homeless persons are not generally told they have to move from the sidewalk, but they are told to prevent their belongings from obstructing other people's passing. If people are observed drinking alcohol outside the Shelter, they are encouraged not to do so and told they are not eligible to receive services if they are caught drinking alcohol outside the Center. *Testimony of Dwayne Neufeld, Bill Grimmer, Hans Erchinger-Davis, and Bridget Reeves; Exhibit L8.*

62. In addition, Drop-In Center Staff conduct "rounds" at night to detect and discourage camping and other undesired activities in the neighborhood, pick up litter, remove shopping carts from the sidewalk, etc. The route for these patrols goes to Mr. Belsher's building and parking lot, along the fence line, to the main Mission building at 910 W. Holly, the New Life building, the Agape Home, and the parking lots, up to Parbury's. These patrols serve the dual purpose of discouraging undesired behaviors and also allowing Center to observe people in crisis who can be encouraged to come in for shelter and services. In addition, the Drop-In Center does not allow shelter guests to congregate outside the shelter at or after "lights out." Overnight guests who want to be able to keep their spot inside are only allowed to go outside for brief smoking breaks.

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<sup>11</sup> The undersigned takes note that there are sidewalks on both sides of W. Holly Street. *Exhibit C40 and Site Visit.*

1 The process requires the would-be smoker to request and be given one of only three  
2 "smoking cards". Smokers are required to stay in front of the building within range of  
3 the security cameras. The Drop-In Center manager testified that Staff will not readmit  
4 guests who stay outside too long or disappear from camera view; their mats are  
reassigned to others in need. *Testimony of Dwayne Neufeld, Bill Grimmer, Hans*  
*Erchinger-Davis, and Bridget Reeves.*

5 63. While Lighthouse is committed to providing low-barrier shelter, the Drop-In Center is  
6 not an ideal building for this needed use. There are no showers at the Center, and they  
7 are only able to offer laundry only once a week. The space limitations mean that when  
8 the building is converted from day time use (tables and chairs) to nighttime use  
9 (sleeping mats on the floor) and vice versa, Center guests have to move outside during  
10 the transition. The process takes about 20 minutes, to move furnishings and mop the  
11 floors between the different uses. Guests are also asked to go outside for an  
12 approximately 30-minute clean up period after breakfast and dinner. On Saturday  
13 mornings, there is a "deep clean" that can take up to two hours, when folks are also  
14 asked to wait outside. These times are when the largest number of people are seen  
15 outside the Center on the sidewalk; there can be 50 or 60 people waiting outside. An  
ideal location would have indoor room for guests during any required transitions. It  
would have showers and laundry available regularly if not daily and it would have an  
area for bicycle maintenance and secure storage, as bikes are the primary mode of  
transportation for many homeless people. These physical shortcomings, together with  
neighbor concerns, motivate Lighthouse to find a different location for the low-barrier  
shelter. *Testimony of Hans Erchinger-Davis, Bill Grimmer, and Bridget Reeves.*

16 64. In addition to commencing the operation of a year-round overnight shelter out of the  
17 Drop-In Center, there were other changes in the neighborhood regarding service  
18 provision to the clients and guests of The Mission and the Drop-In Center. In the  
19 summer of 2016, there was a change in Drop-In Center leadership, which brought a new  
20 focus on increased collaboration with other service providers and agencies in  
21 Bellingham. This significantly increased the number of individuals accessing services at  
22 the Drop-In Center. At the same time, the Compass Health Rainbow Recovery Center,  
23 which had provided mental health services at 209 W. Holly Street for about 20 years,  
24 closed in approximately June 2017. According to Lighthouse witnesses, many people  
25 who had gone there for services began coming to the Drop-In Center. Salt on the Street,  
26 a provider of meals, discontinued services in the neighborhood, sending more people to  
27 the Drop -In Center. The availability of the variety of services in one place attracted  
camping homeless individuals to the Drop-In Center from throughout the City,  
especially from nearby Maritime Heritage Park, Elizabeth Park, and the railroad tracks.  
*Testimony of Dwayne Neufeld and Bridget Reeves.*

28 65. Addressing the Appellant's contention that the operation of the low-barrier shelter has  
caused him to lose prospective tenants, Lighthouse argued that no evidence was

presented regarding the historic vacancy rate in the building under the previous owner or in the neighborhood, or about the amount of time it typically takes to re-rent commercial space. Lighthouse acknowledged that the Appellant provided evidence of one potential tenant who declined to rent based on the shelter. Specifically, regarding Whatcom Dispute Resolution Center, Lighthouse offered evidence tending to show there were multiple factors forming the basis of that agency's decision not to rent in the Appellant's building, and that they ultimately decided to buy a building instead of renting. *Exhibit L27*.

66. There are other organizations besides Lighthouse providing services to homeless individuals in the Old Town Overlay District. Maritime Heritage Park, located several blocks down W. Holly Street, is a known location for homeless to camp or sleep on benches. At that park, volunteers provide services, meals, and clothes to the homeless. Church on the Street, at 1310 G Street, provides meals to the homeless two nights a week. The Episcopal Church at the corner of Broadway and W. Holly Street provides meals to the homeless. *Exhibits L22; Testimony of Bridget Reeves*.

67. Addressing the Appellant's contention that the impacts began in October 2016 when the Drop-In Center began to offer year-round overnight accommodations, Lighthouse contended that the number of homeless persons in the Old Town Overlay District has been increasing as the City-wide homelessness crisis has grown and that this trend began before 2016. In 2014, the previous owner of the Appellant's building petitioned the Whatcom County Board of Equalization to reduce the assessed value of the property based, in part, on "the Light House Mission is next door, which causes issues with loitering, strewn garbage, stolen shopping carts and numerous homeless due to the drop in center and offering meals, closeness of tracks, and train noise causing the building to shake." *Exhibit L20*. Lighthouse contended that these impacts predate the operation of the year-round overnight shelter. *Exhibit R17*.

68. Addressing the Appellant's requested condition requiring Lighthouse to move the entrance to the Drop-In Center/low-barrier shelter to the rear of the building, Lighthouse Staff testified about the difficulties that would be encountered if the suggestion were adopted as a permit requirement. First, the rear entrance to the Drop-In Center is adjacent to the rear yard of the Agape Home, which is a permanent shelter for women and women with children who have left domestic violence situations. There is a playground in the rear of Agape Home, adjacent to the rear entrance to the Drop-In Center. No men are allowed in the Agape Center except for Staff, and even Staff must give warnings prior to entering. To be across a chain link fence from an area where men are waiting to enter the Drop-In Center during transitions, or are recreating or smoking outside, would be a violation of the Agape Home's protocols for protecting their shelter residents. Mixing people at different stages of recovery would harm the therapeutic environments of both programs. The space between the two buildings does not lend itself to effective visual/auditory screening; to use the rear entrance of the

Center would require abandonment of the playground and the women's outdoor smoking area next to the rear entrance to the Center, which are Agape Home's only outdoor spaces. Women and children need access to the outdoors and children need to play in order to recover from trauma. Additionally, the rear entrance provides access to the main areas of the Center by a tall, steep 100-year old wooden staircase; there would be no access for disabled persons from the rear of the building. Emergency response vehicles would still have to park on the street on the front of the building, and emergency responder and disabled person access would have to remain in place from Holly Street. The outdoor area behind the Center topographically slopes precipitously down to the rail road tracks; significant grading and construction would be required to provide a useable space and access to it. The requested relocation of the entrance and waiting area to the rear of the Drop-In Center would require large scale earthwork and reconfigurations of both buildings, which is not financially feasible, especially in light of the temporary nature of the 24-hour shelter operation in the Center. Lighthouse would have to hire many more Staff members to secure two entrances. *Testimony of Hans Erchinger-Davis and Bridget Reeves; Exhibit C45.*

## CONCLUSIONS

### **Jurisdiction:**

Pursuant to BMC 21.10.040.B.8, interpretations of development regulations are Type I administrative decisions, which are appealable to the City's Hearing Examiner.

### **Criteria for Deciding Appeals:**

Pursuant to BMC 21.10.250.G, in an appeal of an administrative City decision to the Hearing Examiner, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner may grant the appeal or grant the appeal with modifications if:

1. The appellant has carried the burden of proof; and
2. The examiner finds that the decision is not supported by a preponderance of the evidence.

Pursuant to Emergency Ordinance No. 2018-04-007, temporary tent or building encampment permits are Type II administrative decisions, which as established in the Ordinance Section 11.E are appealable to the Hearing Examiner in accordance with the procedures in BMC 21.10.250 (above).

### **Additional Applicable Regulations:**

#### **BMC 20.24.010 Interpretation generally.**

- A. In interpreting and applying the provisions of this title, the provisions shall be held to be minimum requirements for the promotion of health, safety, and general welfare of the public. Therefore, where the provisions within this title impose a greater

1 restriction than are imposed or required by other laws, ordinances, easements,  
2 regulations, codes, or covenants, the provisions of this title shall control. Except,  
3 however, when the language contained within the land use section of the  
neighborhood plan specifically supersedes aspects of this title.

4 B. The director shall have the authority to determine any question which may arise  
5 regarding the proper interpretation or application of the land use development  
ordinance.

6 C. Requests for interpretations shall follow the procedures established in BMC  
21.10.270, interpretation of development regulations.

7 BMC 20.24.020 Interpretation - Unclassified uses in commercial and industrial zoning  
8 districts.

9 A. Upon inquiry by an applicant, an administrative interpretation shall be made by the  
10 director to determine if a proposed use may be established that is not specifically  
11 listed as either allowed, allowed conditionally or prohibited in a specific commercial  
12 or industrial zoning district. The interpretation shall be prepared consistent with the  
13 process and procedures specified in BMC 21.10.270. In preparing the interpretation,  
14 the director shall use the criteria established in subsection (B) of this section. Should  
15 an interpretation be made that an unclassified use may be allowed or allowed  
conditionally, the director shall allow for the establishment of the use following  
adopted processes. Should an interpretation be made that a proposed use is not  
allowed within a specific zoning district, the director shall indicate which zones, if  
any, do permit the proposed use.

16 B. In order to make a determination that an unclassified use is allowed or allowed  
conditionally, the director must find the following:

- 17 1. The proposed use would be consistent with the purpose and intent of the zoning  
18 district in which it is proposed to be established and/or would be in the public  
interest; and
- 19 2. The proposed use would be consistent with the policies of the comprehensive  
20 plan; and
- 21 3. The proposed use would not generate greater vehicular traffic levels, noise, light  
22 and glare, odors, emissions or other similar impacts than those associated with  
23 uses that are specifically listed as permitted or conditional within the subject  
zoning district. Uses that generate similar vehicular traffic levels, noise, light  
24 and glare, odors, emissions or other similar impacts to an allowed conditional use  
shall require conditional use approval.



1 Emergency Ordinance 2018-04-007 Section 11.B

2 The Director shall decide whether to grant, grant with conditions, or deny a temporary use  
3 permit. Before any temporary use permit may be granted, the Applicant shall show and the  
4 Director shall find that:

- 5 1. The proposed use would not be materially detrimental to the public welfare, or  
6 substantially injurious or improvements in the vicinity of the proposed encampment;
- 7 2. The proposed use meets the requirements of this ordinance;
- 8 3. The proposed use shall be in keeping with the goals and policies of the  
9 Comprehensive Plan;
- 10 4. Measures including the requirements herein and as identified by the Director have  
11 been taken to minimize the possible adverse impacts which the proposed  
12 encampment may have in the area in which it is located intending that the risk of  
13 significant impacts be reduced to a temporary and acceptable level and the duration  
14 of the encampment will be limited; and
- 15 5. All permit conditions must be consistent with RCW 35.21.915 and RCW 19.27.042.

16 RCW 35.21.915 Temporary encampments for the homeless - Hosting by religious organizations  
17 authorized - Prohibitions on local actions.

- 18 (1) A religious organization may host temporary encampments for the homeless on  
19 property owned or controlled by the religious organization whether within buildings  
20 located on the property or elsewhere on the property outside of buildings.
- 21 (2) A city or town may not enact an ordinance or regulation or take any other action  
22 that:
  - 23 (a) Imposes conditions other than those necessary to protect public health and safety  
24 and that do not substantially burden the decisions or actions of a religious  
25 organization regarding the location of housing or shelter for homeless persons on  
26 property owned by the religious organization;
  - 27 (b) Requires a religious organization to obtain insurance pertaining to the liability of  
28 a municipality with respect to homeless persons housed on property owned by a  
religious organization or otherwise requires the religious organization to  
indemnify the municipality against such liability; or
  - (c) Imposes permit fees in excess of the actual costs associated with the review and  
approval of the required permit applications.
- (3) For the purposes of this section, "religious organization" means the federally  
protected practice of a recognized religious assembly, school, or institution that  
owns or controls real property.
- (4) An appointed or elected public official, public employee, or public agency as defined  
in RCW 4.24.470 is immune from civil liability for (a) damages arising from the

1 permitting decisions for a temporary encampment for the homeless as provided in  
2 this section and (b) any conduct or unlawful activity that may occur as a result of the  
3 temporary encampment for the homeless as provided in this section.

### 4 **Conclusions Based on Findings**

- 5 1. The two appeals considered in these consolidated proceedings are properly reduced to  
6 two essential questions. First, is the Shelter a permitted use in the Old Town Overlay  
7 District? Second, does the issued Temporary Building Encampment Permit comply with  
8 Emergency Ordinance 2018-04-007? In its briefing, the Appellant argued that "the  
9 Hearing Examiner has the right to determine whether or not the Lighthouse Mission has  
10 provided sufficient information within the record on order for the Planning Director to  
11 find compliance with each and every one of these criteria..." and that "after the Hearing  
12 Examiner has established that either the Lighthouse Mission did or did not fulfill its  
13 obligation of establishing compliance with the criteria [Section 11(b)(1)-(S) of the  
14 Emergency Ordinance 2018-04-007] then the Appellant has the burden of proof."  
15 *Appellant's Written Closing Argument, Exhibit R14.*

16 The Appellant's framing of the burden of proof is not consistent with BMC 21.10.250.G  
17 and it is not adopted.<sup>12</sup> In an appeal of both the Type I Code Interpretation<sup>13</sup> and the  
18 Type II Temporary Building Encampment Permit, the Appellant bears the initial burden  
19 of proving City error by a preponderance of evidence. Washington courts have held  
20 that preponderance of evidence means that the decisionmaker must be persuaded,  
21 considering all the evidence, that the proposition forwarded by the party with the burden  
22 of proof is more probably true than not true. *Mohr v. Grant*, 153 Wn.2d 812, 822  
23 (2005).

- 24 2. ***Code Interpretation Pursuant to BMC 20.24.020.B:*** The record presented fails to  
25 establish by a preponderance of evidence that the Director erred in determining that the  
26 use of the Drop-In Center as a year round overnight low-barrier shelter is similar to uses  
27 permitted outright in the Old Town Overlay District and therefore is allowed in the  
28 District pursuant to BMC 20.35.065.A.24, in effect at the time the code interpretation

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21 <sup>12</sup> See also, Hearing Examiner Rules of Procedure Rule 4.15 Burden Of Proof: (a) Where applicable ordinance(s)  
22 so provide, the Hearing Examiner shall accord deference or other presumption as directed by the applicable  
23 ordinance(s). (b) Where the applicable ordinance(s) provide that the appellant has the burden, appellant(s) must  
24 show by the applicable standard of proof that the Department's decision or action is not in compliance with the  
25 ordinance(s) authorizing that decision or action. (c) Where the applicable ordinance(s) do not provide that the  
26 appellant has the burden, the Department shall make a prima facie showing that its decision or action is in  
27 compliance with the ordinance(s) authorizing that decision or action. (d) Unless otherwise provided by applicable  
28 ordinance(s), statute, or case law, the standard of proof is a preponderance of the evidence.

<sup>13</sup> A party challenging an agency's interpretation of a statute or regulation bears the burden of demonstrating that  
the challenged interpretation is erroneous. *City of Bellevue v. East Bellevue Community Mun. Corp.*, 119 Wn. App  
405, 413, (2003).

1 was requested.<sup>14</sup> Specifically, the use of the building at 1013 W. Holly Street as a low-  
2 barrier shelter is similar to a service care use in that it provides secure sleeping quarters  
3 with overnight supervision of persons who, by reasons of their mental or physical  
4 disability, addiction to drugs or alcohol, or family and social adjustment problems,  
5 require transitional housing and access to and support for rehabilitation and social  
6 readjustment. Homeless persons staying in the low-barrier shelter have access to  
7 counseling, vocational guidance, training, and other similar rehabilitative services. Drug  
8 and alcohol detoxification are not provided on-site; the use of medication by any shelter  
9 guest is incidental to that person's stay and is not a criterion for shelter. Although the  
10 Appellant contended that service care facilities require state licensure, no argument or  
11 evidence were forwarded that persuaded the undersigned that state licensure is a  
12 defining characteristic of the "service care" land use as defined in the Bellingham code.  
13 The Lighthouse low-barrier shelter is similar to a service care use, and also has functions  
14 that resemble other uses allowed in the zone, including hotels (in that they provide  
15 transient accommodations) and eating establishments. Further, the permitted uses table  
16 contains a list of prohibited uses for the Old Town Overlay District; overnight shelters  
17 for the homeless are not on the list of prohibited uses. *Findings 1, 2, 3, 5, 7, 11, 12, 13,*  
18 *14, 15, and 16.*

- 12 a. *Addressing BMC 20.21.020.B.1:* The Code does not establish a "purpose" for the  
13 Old Town Overlay District, which is an overlay on top of a Commercial general use  
14 type. The Code does establish a "purpose" for Commercial general use type, stated  
15 as follows:

15 Generally, the commercial use type is intended to accommodate various  
16 levels of business and service facilities; such levels will fluctuate  
17 depending on the area's location, function and proximity to population and  
18 transportation facilities.

18 *BMC 20.33.020.A.* Especially given the historic presence of The Mission and other  
19 entities providing services to similar populations that have operated in the  
20 immediate vicinity of the Appellant's property for decades, the undersigned is not  
21 persuaded that the impacts alleged by the Appellant to have arisen from the October  
22 2016 onset of the year round overnight low-barrier shelter are inconsistent with  
23 "various levels of business and service facilities" as they have been historically  
24 conducted in the Old Town Overlay District. In addition to being consistent with  
25 the purpose of the zone, placement of the use in the Old Town Overlay District  
26 serves the public interest, as homeless persons are members of the public and  
27 residents of Bellingham who otherwise would sleep outdoors without shelter, which  
28 the record shows increases danger to the homeless persons and demand for Police

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26 <sup>14</sup> Counsel for the City attested at hearing that the version of BMC 20.35.065 in effect at the time the Code  
27 Interpretation was requested is accurately reflected in Exhibit C44.

1 and emergency responder services. *Findings 1, 2, 3, 5, 7, 11, 12, 13, 14, 15, 16,*  
2 *42, 44, and 54*

- 3 b. *Addressing BMC 20.21.020.B.2:* The primary argument forwarded on appeal that  
4 the Code Interpretation is inconsistent with the Comprehensive Plan was premised  
5 on Policy LU-27, which states: "Allow nonprofit homeless shelters outright in  
6 Industrial zones and conditionally in Commercial zones." The appeal also broadly  
7 challenged the lack of documentation in the decision that the Old Town Overlay  
8 District Subarea Plan was reviewed and considered without reference to specific  
9 policies alleged to conflict with allowing the shelter in the subarea. Of note, the  
10 permitted uses table in effect at the time the instant code interpretation was requested  
11 contained four divisions: land uses permitted outright; land uses permitted subject to  
12 code-established use-specific conditions; uses allowed through conditional use  
13 permit review; and prohibited uses. Nonprofit homeless shelters are not included in  
14 any of those four categories; however, as concluded above, the listed use to which  
the shelter is most similar (service care) is a use that is permitted outright without  
conditional use permit review. The Director's Code Interpretation calls out multiple  
Comprehensive Plan policies that support approval of a low-barrier shelter in  
Bellingham, most directly Policy H-50, which states: "Continue to encourage and  
support the development of emergency transitional, and supportive housing with  
appropriate on-site services for people with special needs and the homeless  
throughout the City... ."

15 When interpreting conflicts between various provisions, and between adopted codes  
16 and comprehensive plans, Washington courts have held that codified zoning  
17 regulations control over general purpose statements and policies. Lakeside  
18 Industries v. Thurston County, 119 Wn. App. 886, 898, (2004). The courts have  
19 also said that to the extent that a comprehensive plan prohibits a use that the zoning  
20 code permits, the use is permitted. Cingular Wireless, LLC v. Thurston County, 131  
21 Wn. App. 756, 769 (2006). Most directly, [if] the [regulation] is silent or ambiguous  
with respect to the specific issue, the interpretation of the agency charged with  
administering the [regulation] is generally entitled to deference, and to sustain it we  
need only find that the agency's interpretation was sufficiently rational to preclude  
us from substituting our judgment for that of the agency. Skamania County v.  
Columbia River Gorge Comm'n, 142 Wn.2d 30, 42 (2001).

22 Considering the record as a whole, especially considering the deference  
23 appropriately given to the City's interpretation of the codes and plans it is charged  
24 with administering, the undersigned is persuaded that the Code's specific provisions  
25 allowing uses similar to uses permitted outright carry more weight than the  
26 aspirational, future-oriented guidance intended by a Comprehensive Plan with  
regard to whether the shelter in its current location is consistent with the  
Comprehensive Plan. *Findings 11, 12, 13, 14, 15, 16, 48, 49, 57, 58, 59, 60, 61, 62,*  
*63, 64, 65, 66, and 67.*

1 c. *Addressing BMC 20.21.020.B.3:* The record presented contains no evidence of  
2 greater vehicular traffic, light, glare, odors, or emissions from the shelter than are or  
3 would be generated by other uses permitted outright in the zone. With respect to  
4 both pedestrian traffic and noise, the specified impacts to which the appeal objects  
5 most, the evidence presented does not show the shelter generates more pedestrian  
6 traffic and noise impacts than those typically associated with uses that are  
7 specifically listed as permitted, including eating and/or drinking facilities, theaters,  
8 passenger terminal facilities, private clubs, schools, day cares, neighborhood clubs,  
9 and public parks. The noise and congregation of people on the sidewalks  
10 complained of are consistent with typical impacts from several uses permitted  
11 outright in the zone. To the extent that the impacts alleged relate to the  
12 homelessness of the people served at the shelter - who presumably are homeless  
13 due, in some measure, to mental or physical disability, addiction to drugs or  
14 alcohol, or family and social adjustment problems - service care facilities by  
15 definition are meant to serve such populations. Again, the Lighthouse Mission and  
16 several other entities expressly serving – and thus attracting to the neighborhood –  
17 people struggling with mental health issues, addiction, and/or homelessness have  
18 been in the neighborhood since long before the alleged onset of the impacts in  
19 October 2016. While the record shows an increase in Police calls to the  
20 neighborhood and in reported incidents, credible testimony from Police Chief Doll  
21 supports the conclusion that the majority of Police activity relates to incidents  
22 among homeless persons rather than to crime against those who live, work in, and  
23 come to the neighborhood to patronize area businesses. Evidence offered by  
24 Appellant witnesses does not affirmatively establish the likelihood that the  
25 increased number of “crimes”, incidences of vandalism, or public disruptions are  
26 the result of the operation of the low-barrier shelter. On the contrary, the record  
27 supports the conclusion that many factors have gone into increasing the  
28 concentration of homeless persons seeking both shelter and services in the  
immediate vicinity of the Drop-In Center, including the fact that the Mission and  
other providers of services to the homeless and mentally ill have been on W. Holly  
Street for decades. The additional activity of having 80 persons sleep on the floor  
in the Drop-In Center has not been affirmatively shown to be the proximate cause  
of the increase in Police calls and difficulties experienced by the Appellant and  
Appellant witnesses. *Findings 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41,*  
*42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63,*  
*64, 65, 66, and 67.*

3. ***Temporary Building Encampment Permit:*** The record presented fails to establish by a  
preponderance of the evidence that the City’s approval of the temporary building  
encampment permit is inconsistent with the criteria for approval established in  
Emergency Ordinance 2018-04-007.
- a. Addressing the allegations that the low-barrier shelter is materially detrimental to the  
public welfare and substantially injurious to property and surrounding businesses,

specifically as a result of litter, sidewalk obstruction, crime, Police presence, deterring business, and property value impacts:

- The record submitted does not prove that the act of providing indoor sleeping spaces for 80 people year-round, instead of only during the winter months as was previously occurring, is the proximate cause of the alleged adverse impacts. The Mission, which has been in Old Town since the 1920s and at its current location at 910 W. Holly Street since 1973, provides overnight accommodations to 60 homeless men. Other service providers in the immediate neighborhood have, over decades, provided services to the homeless and to persons with mental health or addiction issues.
- The record submitted does not prove that the litter and vandalism complained of are caused by low-barrier shelter guests or are the result of 80 people sleeping inside in stead of camping outdoors in the City.
- While the sidewalk may be occupied by shelter guests during transitions and during the two-hour deep on Saturday mornings, the record submitted failed to show this violates any provision of the municipal code.
- The evidence submitted shows that the increase in crime is among the homeless and not committed by homeless against area property or business owners.
- With respect to property values, the evidence submitted does not persuade the undersigned that operation of the low-barrier shelter is the cause of any decrease in property value. First, the Mission has been down the street and the homeless have been served in the neighborhood for decades prior to Mr. Belsher's purchase of the property. With due respect, the appraisals submitted of a \$700,000 value with the shelter and \$1.3 million without the shelter fail to account for the facts that the pre-purchase tax assessed value of Mr. Belsher's property was over a million dollars (and even that had been recently lowered by the Whatcom County Board of Equalization before his purchase) and that Mr. Belsher managed to negotiate a purchase price of only \$821,500, prior to the authorization for year round low-barrier shelter. The one new tenant the Appellant signed (other than Bellingham Police Department) agreed to a rent of \$11 per square foot, significantly higher than the \$7.50 suggested in the appraisal.

The record submitted does not show by a preponderance of evidence that the impacts alleged are caused by the provision of overnight shelter to 80 individuals. *Findings 1, 2, 3, 5, 6, 8, 9, 10, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.*

- b. The Temporary Permit meets the requirements of Emergency Ordinance 2018-04-007. The Ordinance defines a "temporary building encampment" as,

1 ...a temporary facility in a building or other permanent structure with  
2 overnight sleeping accommodations, owned, operated, or managed by a  
3 religious organization, the primary purpose of which is to provide temporary  
4 shelter and services during extreme weather conditions or other instances  
5 where additional shelter is needed for the homeless in general or for specific  
6 populations of the homeless. This definition includes low-barrier shelters  
7 and other similar uses.

8 *Emergency Ordinance Section 4.B.* Section 8 of the Ordinance establishes a  
9 permitted duration for temporary building encampments, as follows:

10 Temporary building encampments may be approved for a period of up to five  
11 years, provided the sponsor and managing agency comply with all permit  
12 conditions. ... The permit shall specify a date by which the use shall be  
13 terminated and the site vacated and, where applicable, restored to its pre-  
14 existing condition.

15 The Appellant argued both that there is no such thing as a “building encampment”  
16 (on the theory that “camp” means tents or tarps, only temporary structures) and that  
17 no definition of “temporary” could reasonably be interpreted to mean five years.  
18 These arguments are unpersuasive, given the explicit language of the ordinance.  
19 [To the extent the Appellant means to challenge the validity of the adopted  
20 Ordinance, the City’s Hearing Examiner lacks authority to hear such challenge.]  
21 Finally, the permit authorizes the use for five years from the date of Resolution  
22 2017-027, which was the first time use of the property as a low-barrier shelter  
23 exempt from building code requirements was approved. The provided expiration  
24 date of May 22, 2022 maintains the use’s compliance with RCW 19.27.042.  
25 *Findings 6, 8, 9, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.*

- 26 c. The Appellant’s arguments with respect to consistency with the Comprehensive  
27 Plan are not substantially different in the two appeals. As concluded above, the  
28 Temporary Permit authorizing the use of the building at 1013 W. Holly Street as a  
temporary building encampment is consistent with the goals and policies of the  
Comprehensive Plan. *Findings 11, 12, 13, 14, 15, 16, 48, 49, 57, 58, 59, 60, 61, 62,*  
*63, 64, 65, 66, and 67.*
- d. Permit conditions adequately address nuisance and litter issues raised by Appellant  
witnesses, including the alleged violations of BMC 10.28.020.B (sidewalk  
obstruction), .020.K (vacant lot becoming attractive nuisance), and .020.Q  
(obstruction of street or sidewalk) and BMC 10.60.070 (property owners duty to  
keep sidewalk in front of property free of litter). Permit Condition No. 1 requires  
Lighthouse to strictly apply its Code of Conduct to its guests and to “bar” guests  
who violate it. The Code of Conduct explicitly addresses “sidewalk conduct.”  
Permit condition number 9 requires on-site supervision in the low-barrier shelter at  
all times to ensure continuous enforcement of the rule prohibiting guests from  
loitering on the sidewalk throughout the day and Permit Condition number 10

requires the Center to be open 24-hours a day to provide guests a place to be other than the sidewalk. Permit Condition number 13 requires on-site trash cans throughout the Center and Condition 14 requires Lighthouse to establish an "Ambassador Program" to formalize its neighborhood outreach efforts, both to enroll unsheltered persons in services that could help them work towards permanent housing and to inform and get feedback from neighboring businesses. Compliance with the 15 permits conditions adequately addresses the sidewalk obstruction and litter concerns raised in the appeal to an acceptable level. The record submitted does not show by a preponderance of evidence that the detrimental impacts alleged by the Appellant arise solely as a result of the low-barrier shelter. It is not reasonable or appropriate to require the shelter to eliminate pre-existing impacts. *Findings 1, 2, 3, 5, 6, 8, 9, 10, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68.*

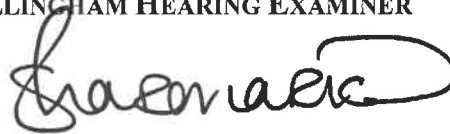
- e. The appeal did not challenge the compliance of the permit's 15 conditions with either RCW 35.21.915 or RCW 19.27.042.

### DECISION

Based on the preceding findings and conclusions, the Appellant has failed to meet the required burden of proof in either appeal. Both appeals are **DENIED**.

ENTERED this 15<sup>th</sup> day of February 2018.

BELLINGHAM HEARING EXAMINER



Sharon Rice